

EXHIBIT 2

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL
PRESCRIPTION OPIATE MDL No. 2804
LITIGATION

Case No.
This document relates to: 17-MD-2804

The County of Summit,
Ohio, et al. v. Purdue Hon. Dan A. Polster
Pharma L.P., et al.
Case No. 17-OP-45004

The County of Cuyahoga v.
Purdue Pharma L.P., et al.
Case No. 18-OP-45090

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

VIDEOTAPED DEPOSITION OF THOMAS G. MCGUIRE, Ph.D.

Tuesday, April 23rd, 2019

9:02 a.m.

Held At:

Robins Kaplan LLP
800 Boylston Street
Boston, Massachusetts

REPORTED BY:

Maureen O'Connor Pollard, RMR, CLR, CSR

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<p>1 Q. My name is Andrew Keyes, and I'm one</p> <p>2 of the lawyers on the defense side of this case.</p> <p>3 I'm with the law firm of Williams & Connolly,</p> <p>4 and we represent Cardinal Health, one of the</p> <p>5 defendants.</p> <p>6 Showing you what has been marked as</p> <p>7 McGuire Exhibit Number 1.</p> <p>8 (Whereupon, McGuire Exhibit Number 1</p> <p>9 was marked for identification.)</p> <p>10 BY MR. KEYES:</p> <p>11 Q. Would you take a look at this exhibit</p> <p>12 and confirm that this is your report plus the</p> <p>13 various appendices that you prepared?</p> <p>14 A. Yes, it looks right.</p> <p>15 Q. Would you turn to Page 47 of</p> <p>16 Exhibit 1? Are you there?</p> <p>17 A. I am, yes.</p> <p>18 Q. There's a signature there. Is that</p> <p>19 your signature?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Did you sign it?</p> <p>22 A. Yeah.</p> <p>23 Q. On March 25, 2019?</p> <p>24 A. I did.</p>	<p>1 Q. And does this set forth your work?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now, did you have anyone</p> <p>4 assisting you in this engagement on behalf of</p> <p>5 Summit County and Cuyahoga County?</p> <p>6 A. Yes, I did.</p> <p>7 Q. How many people assisted you?</p> <p>8 A. This was -- would have been staff at</p> <p>9 Compass Lexecon. I would say I know of four or</p> <p>10 five by name. And my impression was that there</p> <p>11 was some more junior people doing some of the</p> <p>12 kind of data entry work.</p> <p>13 Q. Who are the four or five people at</p> <p>14 Compass Lexecon you know by name that assisted</p> <p>15 you in this engagement?</p> <p>16 A. Hal Sider.</p> <p>17 Q. Can you spell the name?</p> <p>18 A. Last name is S-I-D-E-R. Erica Benton,</p> <p>19 B-E-N-T-O-N. Alice Kaminski, K-A-M-I-N-S-K-I.</p> <p>20 And there's a statistician guy who I'll remember</p> <p>21 before we close today, but there's another guy I</p> <p>22 worked with by name.</p> <p>23 Q. Are those the names of the people at</p> <p>24 Compass Lexecon that you can remember right now?</p>
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<p>1 Q. And this Exhibit 1 is titled Expert</p> <p>2 Report of Professor Thomas McGuire, Damages to</p> <p>3 Bellwethers, dated March 25, 2019.</p> <p>4 When you refer to bellwethers, are you</p> <p>5 referring to Summit County and Cuyahoga County?</p> <p>6 A. Yes.</p> <p>7 Q. And does this report set forth your</p> <p>8 opinions in this case?</p> <p>9 A. Yes, it does, noting that I have</p> <p>10 another report in the case.</p> <p>11 Q. Okay. You have a second report</p> <p>12 regarding nuisance?</p> <p>13 A. Yes.</p> <p>14 Q. And I'll show that to you in a moment.</p> <p>15 A. Okay.</p> <p>16 Q. But regarding damages to Summit County</p> <p>17 and Cuyahoga County, this is your report?</p> <p>18 A. Yes, it is.</p> <p>19 Q. And does it reflect your calculations?</p> <p>20 A. Well, it reflects my calculations</p> <p>21 building on others' calculations.</p> <p>22 Q. Including Mr. Cutler?</p> <p>23 A. Including Professor Cutler and</p> <p>24 Professor Rosenthal.</p>	<p>1 A. Yes.</p> <p>2 Q. Hal Sider, Erica Benton, and Alice</p> <p>3 Kaminski?</p> <p>4 A. Yes.</p> <p>5 Q. And then a statistician whose name you</p> <p>6 think you'll remember later today?</p> <p>7 A. Yes.</p> <p>8 Q. Anyone else?</p> <p>9 A. There might be. I'll -- if I remember</p> <p>10 someone, I'll let you know.</p> <p>11 Q. What was Hal Sider's role in this</p> <p>12 engagement?</p> <p>13 A. He was a kind of project manager, I</p> <p>14 would say.</p> <p>15 Q. What do you mean by "project manager"?</p> <p>16 A. The most senior person at Compass Lex.</p> <p>17 Q. And what work did he perform on this</p> <p>18 engagement?</p> <p>19 A. You mean in my report, or overall in</p> <p>20 the --</p> <p>21 Q. In your report.</p> <p>22 A. In my report. He would have been one</p> <p>23 of the people advising me about the -- kind of</p> <p>24 the form of presentation of some of the numbers,</p>

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<p>1 and we went over the detailed budgets together, 2 so he would have had input into some of that. 3 Q. What kind of input? 4 MR. SOBOL: Just the subject, not the 5 content. 6 A. Inputs regarding the treatment of 7 different kind of costs that were listed in the 8 budgets. 9 BY MR. KEYES: 10 Q. Anything else you can tell me about 11 the work that Mr. Sider performed in connection 12 with this engagement? 13 A. That was the primary thing. He was 14 aware of what was going on, so... 15 Q. What do you mean? 16 A. I mean, he was aware of drafts of 17 report. He was aware of the stages of work. 18 Q. What was Erica Benton's role in this 19 engagement? 20 A. She was -- is also a senior person. I 21 met -- I haven't met her. I've just spoken with 22 her on the phone. She oversaw much of the data 23 collection from the bellwethers. 24 Q. And when you refer to bellwethers,</p>	<p>1 A. A component of my work was to identify 2 from budgets -- from the public budgets of the 3 bellwether counties the components of the costs 4 that might be affected by harms that were due to 5 misconduct of the defendants, and not all of the 6 costs, not all of the budget items would be 7 subject to that, so there was a kind of 8 selection of the budget items that were 9 economically justified and included in that 10 analysis. 11 Q. Well, you said she participated in 12 decisions regarding the different forms of costs 13 in the budget. Who made the decisions? 14 A. I made all the decisions. 15 Q. So what was her role when you said she 16 participated in the decisions? 17 A. Well, she would have been involved in 18 the conversations. When we talked about these 19 things, she would have helped explain what 20 non-compensation costs are there for this 21 particular division. So there was a lot of kind 22 of interpretation of the details of the budget 23 documents that she helped with. 24 Q. You mentioned Alice Kaminski.</p>
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<p>1 you're referring to Summit County and Cuyahoga 2 County? 3 A. Yes. 4 Q. And only those two counties? 5 A. Yes. 6 Q. And what do you mean she oversaw the 7 data collection? 8 A. She was a good person to ask questions 9 of with respect to various components of the 10 cost report, and I -- my impression was she was 11 kind of on top of things and was working with 12 other people and would help them in their data 13 work. 14 Q. What work did she perform on this 15 engagement? 16 MR. SOBOL: Just the types, not the 17 content. 18 A. I think supervising some Compass Lex 19 staff, and also she would have participated in 20 some of the decisions about different forms of 21 costs in the budget. 22 BY MR. KEYES: 23 Q. What do you mean she participated in 24 decisions?</p>	<p>1 A. Yes. 2 Q. What was her role in this engagement? 3 A. Less senior to Erica. I hope I'm not 4 getting the hierarchy wrong at Compass Lex. She 5 worked on some of the budget items. I think she 6 may not have been involved in all of them, but 7 in a component, some components of it. 8 Q. Anything else you can say about her 9 role in this engagement? 10 A. No. 11 Q. What work did she perform on this 12 engagement then? 13 A. She would have supervised some of the 14 data entry that appears in the Excel 15 spreadsheets in my report. 16 Q. Anything else? 17 A. Not that I can think of. 18 Q. And what was the role of the 19 statistician you referenced? 20 MR. SOBOL: Was it Evan? 21 A. Evan. 22 BY MR. KEYES: 23 Q. What's Evan's last name? 24 A. I can't remember, I'm sorry.</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q. Okay.</p> <p>2 MR. SOBOL: McKay?</p> <p>3 A. Evan McKay, yes.</p> <p>4 MR. KEYES: I appreciate the</p> <p>5 assistance, but for now I'd just like to know</p> <p>6 what Professor McGuire knows without assistance.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. What is Evan's last name, as you</p> <p>9 remember it?</p> <p>10 A. Evan McKay.</p> <p>11 Q. What was Evan McKay's role in --</p> <p>12 A. I call him a statistician because he</p> <p>13 seemed to be aware of and interested in some of</p> <p>14 the conduct of the data analysis, and he was</p> <p>15 also helpful to me on the budget side.</p> <p>16 Q. What work did Mr. McKay perform in</p> <p>17 this engagement?</p> <p>18 A. He helped explain to me some of the</p> <p>19 analysis being done by Professor Cutler.</p> <p>20 Q. Did he help explain to you some of the</p> <p>21 analysis done by Professor Rosenthal?</p> <p>22 A. No, he didn't.</p> <p>23 Q. What about the work done by</p> <p>24 Professor Gruber?</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Why did you need Mr. McKay's</p> <p>2 assistance in understanding the statistical</p> <p>3 analysis done by Professor Cutler?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 A. Well, I wanted to be sure I understood</p> <p>6 it.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. And you found Mr. McKay helpful to</p> <p>9 your understanding of what statistical analysis</p> <p>10 and regressions Professor Cutler had performed?</p> <p>11 A. Yes.</p> <p>12 Q. What else did Mr. McKay do? You said</p> <p>13 he seemed to be aware of and had an interest in</p> <p>14 the conduct of the data analysis. You said he</p> <p>15 helped explain to you some of the statistical</p> <p>16 analysis performed by Professor Cutler. What</p> <p>17 else, if anything, did Mr. McKay do?</p> <p>18 A. That was his primary role.</p> <p>19 Q. And have you met with Mr. Sider?</p> <p>20 A. Yes.</p> <p>21 Q. How many times?</p> <p>22 A. Six, seven.</p> <p>23 Q. Have you met with Ms. Benton?</p> <p>24 A. No, not in person.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. I'm sorry, what about it?</p> <p>2 Q. Did Mr. McKay help explain to you some</p> <p>3 of the analysis done by Professor Gruber?</p> <p>4 A. No, he didn't.</p> <p>5 Q. Okay. Did Mr. McKay explain to you</p> <p>6 some of the analysis by anyone else in this case</p> <p>7 beside Professor Cutler?</p> <p>8 A. No, he didn't.</p> <p>9 I have more of another category of</p> <p>10 assistants once you're done with Compass Lex.</p> <p>11 Q. Okay. Did you speak with</p> <p>12 Professor Cutler about the work he did in this</p> <p>13 case?</p> <p>14 A. Yes.</p> <p>15 Q. Did you speak with Professor</p> <p>16 Rosenthal?</p> <p>17 A. I did, yes.</p> <p>18 Q. Did you speak with Professor Gruber?</p> <p>19 A. Yes.</p> <p>20 Q. And when you said a moment ago that</p> <p>21 Mr. McKay helped explain some of the analysis by</p> <p>22 Professor Cutler, are you referring to the</p> <p>23 statistical analysis that Professor Cutler did?</p> <p>24 A. Yes, the regressions.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Have you talked with Ms. Benton over</p> <p>2 the phone?</p> <p>3 A. Yes.</p> <p>4 Q. How many times?</p> <p>5 A. Ten. These are estimates.</p> <p>6 Q. Have you met with Ms. Kaminski?</p> <p>7 A. Yes.</p> <p>8 Q. How many times?</p> <p>9 A. One time.</p> <p>10 Q. And have you met with Mr. McKay?</p> <p>11 A. Never, no, only spoken on the phone.</p> <p>12 Q. How many times?</p> <p>13 A. Eight times.</p> <p>14 Q. How many?</p> <p>15 A. Eight. These are estimates.</p> <p>16 Q. Can you tell me anything more about</p> <p>17 the work that Mr. Sider, Ms. Benton,</p> <p>18 Ms. Kaminski, or Mr. McKay did to assist you in</p> <p>19 this engagement?</p> <p>20 MR. SOBOL: Objection.</p> <p>21 A. They would answer questions for me if</p> <p>22 I had something more I wanted to know about</p> <p>23 something.</p> <p>24 BY MR. KEYES:</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. Anything else?</p> <p>2 A. No, not that I can think of.</p> <p>3 Q. Okay. Did you receive assistance from</p> <p>4 anyone who was not employed by Compass Lexecon?</p> <p>5 MR. SOBOL: Objection to form.</p> <p>6 A. Yes. This was the other category of</p> <p>7 assistance I wanted to be sure to mention.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. What is this category?</p> <p>10 A. This was the primary statistical</p> <p>11 analyst who helped Meredith Rosenthal. His name</p> <p>12 is Forrest. Last name is McCluer,</p> <p>13 M-c-C-L-U-E-R. And similarly to Evan in helping</p> <p>14 me understand what Dave Cutler did, Forrest was</p> <p>15 helpful in explaining the analysis that Meredith</p> <p>16 Rosenthal did.</p> <p>17 Q. Forrest McCluer, did I get that name</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Did Mr. McCluer work for</p> <p>21 Professor Rosenthal?</p> <p>22 A. Meaning, I'm sorry, at her direction,</p> <p>23 or for her in some employment relationship?</p> <p>24 Q. You said there was a primary</p>	<p style="text-align: right;">Page 24</p> <p>1 statistics?</p> <p>2 A. I'm pretty good at statistics, yes.</p> <p>3 Q. Do you claim to have an expertise?</p> <p>4 A. I'm sorry, what was the question?</p> <p>5 Q. Do you claim to have an expertise in</p> <p>6 statistics?</p> <p>7 A. Well --</p> <p>8 MR. SOBOL: Object to the form.</p> <p>9 A. -- I would say yes. And I'll briefly</p> <p>10 explain, and, of course, you feel free to follow</p> <p>11 up as you like.</p> <p>12 Much of the work that I do is applied</p> <p>13 health economics, and looking back at the work</p> <p>14 that has had the most impact and received the</p> <p>15 most recognition in terms of awards and prizes</p> <p>16 has been applied econometrics. So while I</p> <p>17 wouldn't be mistaken for an econometrician,</p> <p>18 which is a statistician who works with</p> <p>19 economics, I have expertise in it, and, in fact,</p> <p>20 much of my academic research is oriented toward</p> <p>21 statistical methods.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. Have you performed a regression</p> <p>24 analysis yourself?</p>
<p style="text-align: right;">Page 23</p> <p>1 statistical analyst. So was Mr. McCluer</p> <p>2 assisting Professor Rosenthal?</p> <p>3 A. He was assisting her in her work, yes.</p> <p>4 Q. And so although you did not speak with</p> <p>5 Professor Rosenthal about her work, you spoke</p> <p>6 with Mr. McCluer about her work?</p> <p>7 MR. SOBOL: Objection.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. Is that correct?</p> <p>10 A. No, that's not correct.</p> <p>11 MR. SOBOL: Objection.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. Okay.</p> <p>14 A. I spoke with both of them about their</p> <p>15 work.</p> <p>16 Q. Okay.</p> <p>17 A. I thought I said that.</p> <p>18 Q. I may have misunderstood then.</p> <p>19 And how many times did you speak with</p> <p>20 Mr. McCluer?</p> <p>21 MR. SOBOL: Objection to form.</p> <p>22 A. Probably six to eight.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. Do you have an expertise in</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Ever?</p> <p>2 Q. Yes.</p> <p>3 A. Many times.</p> <p>4 Q. Did you perform any regression</p> <p>5 analysis in this case, in this engagement?</p> <p>6 A. No, I didn't.</p> <p>7 Q. Do you consider yourself capable of</p> <p>8 doing a regression analysis in this engagement?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 A. Well, that would depend on the</p> <p>11 assignment.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. Well, could you have done the work</p> <p>14 that Professor Rosenthal did?</p> <p>15 A. Could I have done it? Not as well as</p> <p>16 she could.</p> <p>17 Q. Do you have the expertise to do the</p> <p>18 work that Professor Rosenthal did?</p> <p>19 A. I'd say I have some of the expertise.</p> <p>20 Q. So you think you could have done the</p> <p>21 regression analyses that Professor Rosenthal</p> <p>22 performed?</p> <p>23 MR. SOBOL: Objection to form.</p> <p>24 A. Well, the work of specifying the</p>

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<p>1 regressions is something that draws on</p> <p>2 experience as well as technical expertise, and</p> <p>3 Meredith trumps me on those. So I might have</p> <p>4 been able to do it, but Meredith is in a better</p> <p>5 position to do it.</p> <p>6 BY MR. KEYES:</p> <p>7 Q. Have you -- could you do the work that</p> <p>8 Professor Cutler did in this case?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 A. I think my answer would be the same.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. Could you perform the regression</p> <p>13 analyses that Professor Cutler conducted?</p> <p>14 A. It's the same answer.</p> <p>15 Professor Cutler is first rank in this kind of</p> <p>16 work, and while I have some qualifications as a</p> <p>17 statistician, I think he's better positioned to</p> <p>18 do the work he did.</p> <p>19 Q. So you've mentioned four or -- you've</p> <p>20 mentioned four people by name at Compass Lexecon</p> <p>21 who assisted you in this engagement.</p> <p>22 A. Yes.</p> <p>23 Q. You've mentioned the conversations you</p> <p>24 had with Mr. McCluer.</p>	<p>1 Q. Okay. Paragraph 12.</p> <p>2 A. Okay.</p> <p>3 Q. It says, "In preparing this report, I,</p> <p>4 and staff under my direction: analyzed data,</p> <p>5 reviewed economic literature, court filings,</p> <p>6 documents produced in this litigation, public</p> <p>7 information and deposition testimony; and spoke</p> <p>8 with representatives of the Bellwether</p> <p>9 governments."</p> <p>10 A. Okay.</p> <p>11 Q. Do you see that language?</p> <p>12 A. Yes.</p> <p>13 Q. When you refer to "staff" in that</p> <p>14 sentence, who are you referring to?</p> <p>15 A. The people we just spoke about.</p> <p>16 Q. Including Mr. McCluer?</p> <p>17 A. Yes.</p> <p>18 Q. And then if you turn to Page 28.</p> <p>19 A. Okay.</p> <p>20 Q. Are you there?</p> <p>21 A. Yes.</p> <p>22 Q. In Paragraph 51 you say, "To identify</p> <p>23 affected divisions, I, and my team under my</p> <p>24 direction, reviewed budget and expenditure</p>
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<p>1 A. Yes.</p> <p>2 Q. Did anyone else assist you in this</p> <p>3 engagement?</p> <p>4 A. I don't think so.</p> <p>5 You're talking about damages?</p> <p>6 Q. I am talking about damages right now.</p> <p>7 A. Okay.</p> <p>8 Q. Anyone else?</p> <p>9 A. I don't think so.</p> <p>10 Q. There are references in your damages</p> <p>11 report, which is Exhibit Number 1, to staff and</p> <p>12 team. When you refer to staff in your report,</p> <p>13 who are you referring to?</p> <p>14 A. It would have been the staff at</p> <p>15 Compass Lex primarily. I guess Forrest would</p> <p>16 have been included in that.</p> <p>17 Q. And when you refer to your team in</p> <p>18 your damages report, which is Exhibit 1, who are</p> <p>19 you referring to?</p> <p>20 A. Do you mind if you point that to me so</p> <p>21 I can see where the context is?</p> <p>22 Q. Sure. Will you turn to Page 8 in your</p> <p>23 report?</p> <p>24 A. Okay.</p>	<p>1 information from the Bellwether governments."</p> <p>2 Do you see that language?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Who are you referring to there?</p> <p>5 A. That would be the same people.</p> <p>6 Q. Anyone else?</p> <p>7 A. No.</p> <p>8 Q. Later in the same paragraph a few</p> <p>9 lines down you say, "In addition, I and members</p> <p>10 of my team met with local officials to confirm</p> <p>11 my understanding of both the activities</p> <p>12 undertaken by these divisions and whether those</p> <p>13 activities had been affected by the opioid</p> <p>14 crisis."</p> <p>15 Do you see that language?</p> <p>16 A. I do, yes.</p> <p>17 Q. Who are you referring to in that</p> <p>18 sentence when you say "members of my team"?</p> <p>19 A. The same group of people.</p> <p>20 Q. Anyone else?</p> <p>21 A. No.</p> <p>22 Q. Now, you are charging \$900 per hour</p> <p>23 for your time on this engagement, correct?</p> <p>24 A. Yes, I am.</p>

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<p>1 Q. How many hours have you spent as of</p> <p>2 today on this engagement?</p> <p>3 MR. SOBOL: Did you say damages only</p> <p>4 again?</p> <p>5 A. Oh, damages only?</p> <p>6 BY MR. KEYES:</p> <p>7 Q. Damages.</p> <p>8 A. Oh, gosh. I haven't divided my hours</p> <p>9 between damages and my other report.</p> <p>10 Q. Okay.</p> <p>11 A. Except it would be in the details of</p> <p>12 the listing of my hours. So I would -- I'll</p> <p>13 guess for you.</p> <p>14 MR. SOBOL: Do you want to do that?</p> <p>15 BY MR. KEYES:</p> <p>16 Q. What's your best estimate of the</p> <p>17 number of hours you have spent on the damages</p> <p>18 analysis?</p> <p>19 A. I would say 250.</p> <p>20 Q. And how much time have you spent on</p> <p>21 the nuisance report?</p> <p>22 A. About the same.</p> <p>23 Q. So is it your best estimate that</p> <p>24 you've spent approximately 500 hours on this</p>	<p>1 BY MR. KEYES:</p> <p>2 Q. How much has Compass Lexecon incurred,</p> <p>3 even if not billed to plaintiffs, for their work</p> <p>4 on this engagement?</p> <p>5 A. I don't know.</p> <p>6 Q. Would you turn to Page 19 of your CV.</p> <p>7 A. My CV. Okay.</p> <p>8 Q. You attached your CV as Appendix IV.A.</p> <p>9 A. Yes, I have it.</p> <p>10 Q. And this lists your litigation</p> <p>11 experience 2014 through present? Yes?</p> <p>12 A. Yes.</p> <p>13 Q. And this continues from Pages 19 and</p> <p>14 20. Is this something you prepared?</p> <p>15 A. Yes.</p> <p>16 Q. Is it accurate?</p> <p>17 A. Well, there's a couple of additions.</p> <p>18 Q. Okay. What are the additions?</p> <p>19 A. The additions are reports I submitted</p> <p>20 since this was submitted. On March 25th I</p> <p>21 submitted a report in a reverse payment case,</p> <p>22 and then I think April 3rd I may -- or 1st I</p> <p>23 submitted also a reverse payment case report.</p> <p>24 Q. Any other reports or testimony you</p>
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<p>1 engagement?</p> <p>2 A. Yes.</p> <p>3 Q. How many hours has Mr. Sider spent on</p> <p>4 this engagement?</p> <p>5 A. I don't know.</p> <p>6 Q. How many hours has Ms. Benton spent on</p> <p>7 this engagement?</p> <p>8 A. I don't know.</p> <p>9 Q. How many hours has Ms. Kaminski spent</p> <p>10 on this engagement?</p> <p>11 A. I don't know.</p> <p>12 Q. How many hours has Mr. McKay spent on</p> <p>13 this engagement?</p> <p>14 A. I don't know.</p> <p>15 Q. How many hours has Mr. McCluer spent</p> <p>16 on this engagement?</p> <p>17 A. I don't know.</p> <p>18 Q. How much has Compass Lexecon billed</p> <p>19 the plaintiffs in this case for their work on</p> <p>20 this engagement?</p> <p>21 A. I don't know.</p> <p>22 MR. SOBOL: Objection to form. Sorry,</p> <p>23 I fell asleep there for a second. Objection to</p> <p>24 form.</p>	<p>1 would add to this list?</p> <p>2 A. No.</p> <p>3 Q. When you say "a reverse payment case,"</p> <p>4 what do you mean?</p> <p>5 A. I mean it's an antitrust case</p> <p>6 involving the potential anti-competitive effects</p> <p>7 of a patent settlement.</p> <p>8 Q. And did you quantify damages in either</p> <p>9 of those two cases you just mentioned where you</p> <p>10 submitted reports on March 25th and April 3rd?</p> <p>11 A. No, I didn't.</p> <p>12 Q. And in the report that you submitted</p> <p>13 on March 25th, who did you submit the report on</p> <p>14 behalf of?</p> <p>15 A. It was a -- class plaintiffs.</p> <p>16 Q. How about in the report that you</p> <p>17 submitted on April 3rd?</p> <p>18 A. The same.</p> <p>19 Q. If you go back to the first page,</p> <p>20 Page 19, you list the In re: Nexium Antitrust</p> <p>21 Litigation.</p> <p>22 A. Yes.</p> <p>23 Q. Was that a reverse payments case?</p> <p>24 A. Yes, it was.</p>

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<p>1 Q. And did you offer opinions in support 2 of the plaintiff?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Did you calculate damages in that 5 case?</p> <p>6 A. No, I didn't.</p> <p>7 Q. And the next case you list, United 8 States of America, ex rel. Saldivar versus 9 Fresenius Medical Care Holdings. 10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What type of case was that?</p> <p>13 A. It was -- I'm probably pronouncing 14 this incorrectly, but a qui tam case.</p> <p>15 Q. And for which party did you submit a 16 report and serve as an expert?</p> <p>17 A. For the plaintiffs.</p> <p>18 Q. Did you quantify damages in that case?</p> <p>19 A. No, I didn't.</p> <p>20 Q. What were your opinions in that case?</p> <p>21 A. They had to do with fraudulent billing 22 and manipulation of tests.</p> <p>23 Q. And the next case you list, Monica 24 Barba and Jonathan Reisman, on behalf of</p>	<p>1 Q. What were your opinions about in that 2 case?</p> <p>3 A. It was also about fraudulent billing 4 and test manipulation.</p> <p>5 Q. And then the next case you list are In 6 Re: Cipro Cases I & II. 7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. What kind of case was that?</p> <p>10 A. That was a reverse payment case.</p> <p>11 Q. For what party did you serve as an 12 expert, or provide a report?</p> <p>13 A. The plaintiffs.</p> <p>14 Q. Did you quantify damages in that case?</p> <p>15 A. No, I did not.</p> <p>16 Q. Turn to the next page of your CV, In 17 Re: Solodyn Antitrust Litigation. 18 Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. What kind of case was that?</p> <p>21 A. That was a reverse payment case.</p> <p>22 Q. For what party did you serve as an 23 expert and submit these expert reports?</p> <p>24 A. For the plaintiffs.</p>
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<p>1 themselves and all others similarly situated 2 versus Shire U.S., Inc. 3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. What kind of case was that?</p> <p>6 A. That was a reverse payment case.</p> <p>7 Q. For which party did you issue these 8 reports and serve as an expert?</p> <p>9 A. The plaintiffs.</p> <p>10 Q. Did you quantify damages in that case?</p> <p>11 A. No, I didn't.</p> <p>12 Q. Turn to the next case, United States 13 of America, ex rel., Tracey George and Dawn 14 Simmons versus Fresenius Medical Care Holdings, 15 Inc. 16 Do you see that one?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Was that also a reverse payment case?</p> <p>19 A. No. That was another qui tam case.</p> <p>20 Q. And for what party did you issue a 21 report and serve as a testifying expert?</p> <p>22 A. The plaintiffs.</p> <p>23 Q. Did you quantify damages in that case?</p> <p>24 A. No, I didn't.</p>	<p>1 Q. Did you quantify damages?</p> <p>2 A. No, I didn't.</p> <p>3 Q. Next one is In Re: Asacol Antitrust 4 Litigation. 5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. What kind of case was that?</p> <p>8 A. That was also a reverse payment case.</p> <p>9 Q. For what party did you serve as an 10 expert and submit these expert reports?</p> <p>11 A. For the plaintiffs.</p> <p>12 Q. Did you quantify damages?</p> <p>13 A. No, I didn't.</p> <p>14 Q. Next case is United States of America 15 ex rel. Stephen A. Krahling and Joan Wlochowski 16 versus Merck & Co., and In Re: Merck Mumps 17 Vaccine Antitrust Litigation. 18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Were those distinct cases? You list 21 them together.</p> <p>22 A. I do. I submitted one report. I'm 23 not sure about the case question.</p> <p>24 Q. Okay. Well, for the two cases listed</p>

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<p>1 there, what kind of cases were they?</p> <p>2 A. They were cases of monopolization, I</p> <p>3 would say.</p> <p>4 Q. So would you consider them to be</p> <p>5 reverse payment cases?</p> <p>6 A. No, they're not reverse payment cases.</p> <p>7 Q. And what were your opinions in that</p> <p>8 case?</p> <p>9 A. It was monopolization.</p> <p>10 Q. And for what party did you serve as an</p> <p>11 expert and submit expert reports?</p> <p>12 A. For the plaintiffs.</p> <p>13 Q. Did you quantify damages in that case?</p> <p>14 A. I quantified overpayments in that</p> <p>15 case, yes. Excuse me. It may have been also a</p> <p>16 qui tam case.</p> <p>17 Q. You say this may have been one?</p> <p>18 A. This may have been one. I'm not</p> <p>19 100 percent sure.</p> <p>20 Q. So in this case you quantified</p> <p>21 overpayments?</p> <p>22 A. Yes.</p> <p>23 Q. Overpayments by whom?</p> <p>24 A. Public and private payers.</p>	<p>1 A. Yes.</p> <p>2 Q. What kind of case was that?</p> <p>3 A. That was a reverse payment case.</p> <p>4 Q. For what party did you serve as an</p> <p>5 expert and submit the expert report?</p> <p>6 A. Also for the plaintiff.</p> <p>7 Q. Did you quantify damages?</p> <p>8 A. No, I didn't.</p> <p>9 Q. We've reviewed the cases that are</p> <p>10 listed on Pages 19 and 20 of your CV, plus the</p> <p>11 two cases that you said earlier you had</p> <p>12 submitted reports in after the date of this CV.</p> <p>13 Are there any other cases where you have served</p> <p>14 as an expert and you have quantified damages?</p> <p>15 A. Yes, with the explanation that a</p> <p>16 report was never submitted, but I was charged</p> <p>17 with quantifying damages.</p> <p>18 Q. What case was that?</p> <p>19 A. I don't remember the name of the drug</p> <p>20 involved. It was a damages phase of a case in</p> <p>21 which a generic firm had been determined to</p> <p>22 enter and sell and profit illegally. And then</p> <p>23 the issue in the case at the time I became</p> <p>24 involved was what the damages should be.</p>
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<p>1 Q. To whom?</p> <p>2 A. To the company involved.</p> <p>3 Q. What was the company involved?</p> <p>4 A. It was Merck.</p> <p>5 Q. And did you call those overpayments</p> <p>6 damages in that case?</p> <p>7 A. I don't remember.</p> <p>8 Q. Did you consider those overpayments to</p> <p>9 be damages in that case?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 A. I'm not sure how to answer. I just</p> <p>12 considered them overpayments.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. In Re: Niaspan Antitrust Litigation,</p> <p>15 what kind of case was that?</p> <p>16 A. That was a reverse payment case.</p> <p>17 Q. For what party did you serve as an</p> <p>18 expert and submit expert reports?</p> <p>19 A. For the plaintiff.</p> <p>20 Q. Did you quantify damages in that case?</p> <p>21 A. No, I didn't.</p> <p>22 Q. And then the last one you list here is</p> <p>23 In Re: Loestrin 24 FE Antitrust Litigation.</p> <p>24 Do you see that?</p>	<p>1 Q. You did not submit an expert report in</p> <p>2 that case?</p> <p>3 A. I did not.</p> <p>4 Q. Did you testify at all in deposition</p> <p>5 or hearing or trial?</p> <p>6 A. No, I don't think so.</p> <p>7 Q. And for what party in that case did</p> <p>8 you serve as an expert?</p> <p>9 THE WITNESS: Is it -- I can answer</p> <p>10 this freely?</p> <p>11 MR. SOBOL: Well...</p> <p>12 THE WITNESS: I don't mind, whatever</p> <p>13 is --</p> <p>14 MR. SOBOL: Was the engagement</p> <p>15 confidential?</p> <p>16 THE WITNESS: I believe it was</p> <p>17 confidential.</p> <p>18 MR. SOBOL: So why don't you testify,</p> <p>19 if it's acceptable, what side of the V you were</p> <p>20 on, whether the claimant or the defendant, and</p> <p>21 leave it at that, if you know.</p> <p>22 A. Would you mind asking the question</p> <p>23 that I should answer?</p> <p>24 BY MR. KEYES:</p>

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<p>1 Q. Well, I'd like to know the name of the</p> <p>2 party for which you served as an expert in this</p> <p>3 case where you claim to have quantified damages</p> <p>4 but you did not submit an expert report and you</p> <p>5 did not give any testimony. I'd like to know</p> <p>6 the name. If you don't want to give the name,</p> <p>7 I'd like to know whether it was the claimant or</p> <p>8 the defendant.</p> <p>9 A. It was the defendant. I'm happy to</p> <p>10 take instruction if I give you the name. It's</p> <p>11 not -- I'm not hiding anything. I just want</p> <p>12 to --</p> <p>13 MR. SOBOL: The party is not here.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. I can't give you instructions. I can</p> <p>16 only ask questions.</p> <p>17 A. I'm appealing to whoever can give me</p> <p>18 instructions.</p> <p>19 MR. SOBOL: Well, I'm here, and I'm</p> <p>20 giving you instructions. If you have good</p> <p>21 reason to believe that the engagement was</p> <p>22 supposed to be confidential without speaking to</p> <p>23 the party, don't divulge it. The attorneys will</p> <p>24 deal with it off-line. You've identified it was</p>	<p>1 Q. Why didn't you give trial testimony in</p> <p>2 the case?</p> <p>3 MR. SOBOL: Objection to the form.</p> <p>4 A. My understanding was I came in on</p> <p>5 appeal stage. And I'm not sure why I wasn't</p> <p>6 asked to testify.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. Did you offer expert opinions in a</p> <p>9 case called Agostino versus Quest Diagnostics,</p> <p>10 Inc.?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Did you submit a report?</p> <p>13 A. Yes.</p> <p>14 Q. Were you deposed?</p> <p>15 A. I don't remember.</p> <p>16 Q. Did you give testimony at trial?</p> <p>17 A. No.</p> <p>18 Q. What kind of case was that?</p> <p>19 A. That was a fraudulent billing case.</p> <p>20 Q. Did you quantify damages?</p> <p>21 A. I don't remember.</p> <p>22 Q. What were your opinions in that case?</p> <p>23 A. It was fraudulent billings.</p> <p>24 Q. That's it?</p>
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<p>1 the defendant, and that should be acceptable for</p> <p>2 now.</p> <p>3 THE WITNESS: All right.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. Did you testify in a case called Blue</p> <p>6 Cross and Blue Shield United of Wisconsin versus</p> <p>7 Marshfield Clinic?</p> <p>8 A. I submitted a report and was deposed</p> <p>9 in that case.</p> <p>10 Q. Did you testify at trial in that case?</p> <p>11 A. No.</p> <p>12 Q. What kind of case was that?</p> <p>13 A. That was also -- that was a damages</p> <p>14 case. I was involved with damages. The case</p> <p>15 itself was monopolization.</p> <p>16 Q. So you prepared a report on damages?</p> <p>17 A. Yes.</p> <p>18 Q. Quantifying damages?</p> <p>19 A. Yes.</p> <p>20 Q. For which party?</p> <p>21 A. For the plaintiff, which was Blue</p> <p>22 Cross/Blue Shield of Wisconsin, I guess.</p> <p>23 Q. Did that case settle?</p> <p>24 A. I don't remember.</p>	<p>1 A. Well, there was a lot of backup to</p> <p>2 that.</p> <p>3 Q. Well, I'm asking for your best</p> <p>4 recollection. In that case, did you offer</p> <p>5 opinions quantifying damages?</p> <p>6 A. I don't remember.</p> <p>7 Q. And for what party did you serve as an</p> <p>8 expert and submit that report?</p> <p>9 A. For a class, plaintiff, for</p> <p>10 plaintiffs.</p> <p>11 Q. Did you serve as an expert in the case</p> <p>12 titled In Re: Actiq Sales and Marketing</p> <p>13 Practices Litigation?</p> <p>14 A. Yes, I did.</p> <p>15 Q. Did you submit a report?</p> <p>16 A. Yes.</p> <p>17 Q. Were you deposed in that case?</p> <p>18 A. I don't remember.</p> <p>19 Q. Did you testify at any trial?</p> <p>20 A. No.</p> <p>21 Q. What kind of case was that?</p> <p>22 A. That, I'm not sure of the legal</p> <p>23 classification. My work had to do with improper</p> <p>24 marketing.</p>

12 (Pages 42 to 45)

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<p>1 Q. Did you quantify damages?</p> <p>2 A. No.</p> <p>3 Q. For what party did you serve as an</p> <p>4 expert?</p> <p>5 A. For the plaintiffs.</p> <p>6 Q. Did you serve as an expert in a case</p> <p>7 titled United States ex rel. Tracey in the</p> <p>8 Northern District of Alabama?</p> <p>9 A. Can you remind me what -- I need more</p> <p>10 information on it than that.</p> <p>11 Q. Do you remember a case in the Northern</p> <p>12 District of Alabama?</p> <p>13 A. You'll have to remind me.</p> <p>14 Q. Okay. Do you remember a case</p> <p>15 involving the United States ex rel. Tracey?</p> <p>16 A. I don't remember. Sorry.</p> <p>17 Q. No recollection of that?</p> <p>18 A. No recollection.</p> <p>19 Q. Okay. Besides the cases we've talked</p> <p>20 about, can you think of any other time when you</p> <p>21 have served as a testifying expert where you are</p> <p>22 attempting to quantify damages?</p> <p>23 A. I can't think of any.</p> <p>24 Q. Have you ever served as a testifying</p>	<p>1 misunderstanding what you're asking.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. Have you ever served as a testifying</p> <p>4 expert where you've quantified the damages</p> <p>5 allegedly suffered by a municipality or a</p> <p>6 government as being the expenditures for the</p> <p>7 municipality or government providing services to</p> <p>8 their constituents?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 A. I believe I answered the more general</p> <p>11 question prior to that. If there's a</p> <p>12 distinction, I'm missing it.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. It's very simple. It's a yes-or-no</p> <p>15 question. If it's no, you can say no.</p> <p>16 MR. SOBOL: Or if he doesn't</p> <p>17 understand it, he can say he doesn't understand</p> <p>18 it, which he just did.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. Have you ever served as a testifying</p> <p>21 expert where you have quantified the damages</p> <p>22 allegedly suffered by the municipality or the</p> <p>23 government as being the expenditures the</p> <p>24 municipality or government incurred in providing</p>
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<p>1 expert where you have quantified damages</p> <p>2 suffered by a municipality, other than this</p> <p>3 case?</p> <p>4 A. No, I haven't.</p> <p>5 Q. Have you ever served as a testifying</p> <p>6 expert where you quantified damages suffered by</p> <p>7 a government other than this case?</p> <p>8 A. I think I would say no.</p> <p>9 Q. So have you ever served as a</p> <p>10 testifying expert where you've quantified the</p> <p>11 damages allegedly suffered by a municipality or</p> <p>12 a government as being the expenditures for</p> <p>13 providing services to their constituents?</p> <p>14 MR. SOBOL: Objection.</p> <p>15 A. Is this different than the previous</p> <p>16 question?</p> <p>17 BY MR. KEYES:</p> <p>18 Q. I think it's a subset of the prior</p> <p>19 question.</p> <p>20 A. To which I said no to.</p> <p>21 Q. Okay. So what's your answer to this</p> <p>22 question?</p> <p>23 MR. SOBOL: Objection.</p> <p>24 A. So it has to be no, unless I'm</p>	<p>1 services to their constituents?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 A. Okay. I'm not sure what the objective</p> <p>4 is of asking a general question and then a</p> <p>5 subquestion that I think is covered by the</p> <p>6 general question to which I answered no. And if</p> <p>7 there's a distinction, I'm missing it.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. So is your answer to my question no?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 A. It's the answer I just gave ten</p> <p>12 seconds ago.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. No, you haven't answered it, sir. I</p> <p>15 asked a broad question, and you gave me a</p> <p>16 straight answer. You said no. Now I'm asking a</p> <p>17 more specific question. And I'm entitled to ask</p> <p>18 the questions I want. You may not think it</p> <p>19 makes any sense --</p> <p>20 A. I'm not --</p> <p>21 Q. -- but I'm entitled to ask the</p> <p>22 questions I want.</p> <p>23 MR. SOBOL: No question before you.</p> <p>24 BY MR. KEYES:</p>

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<p style="text-align: right;">Page 50</p> <p>1 Q. So I'm asking you to answer my 2 question, whether you think it's useful or not. 3 Okay? 4 MR. SOBOL: Objection. There's no 5 question before you. 6 BY MR. KEYES: 7 Q. Okay. Have you ever served as a 8 testifying expert where you purported to 9 quantify the damages suffered by a municipality 10 or government as being the expenditures incurred 11 by the municipality or the government in 12 providing services to its constituents? 13 MR. SOBOL: Objection to form. 14 A. We seem to be stuck. I have answered 15 what I regarded to be a question that covers 16 this, and I'm puzzled why that answer doesn't -- 17 isn't sufficient, and my puzzlement leads me to 18 wonder if there's something I'm missing. 19 BY MR. KEYES: 20 Q. So you're refusing to answer the 21 question? 22 MR. SOBOL: No, he's not. He's given 23 the answer several times now. 24 BY MR. KEYES:</p>	<p style="text-align: right;">Page 52</p> <p>1 cost, and that opportunity cost is "damages"? 2 A. I would say that's the general 3 economic approach to a question like this, that 4 spending is the right metric for damages because 5 of opportunity cost considerations, and then 6 yes, it's damages. 7 Q. So please name for me the specific 8 cases where you have offered the opinion that an 9 expenditure has an opportunity cost, and that 10 opportunity cost is "damages." 11 A. All the cases in which I've responded 12 to your questions that I do damages, that's what 13 damages are regarded in economics. 14 Q. And did any of those cases involve 15 quantifying damages allegedly suffered by a 16 municipality or a government? 17 A. No, they did not. 18 Q. Has a court ever excluded you from 19 testifying as an expert? 20 A. There was in Nexium some of the work 21 that I did that was not heard by the jury. I'm 22 not sure if that's what you're asking about. 23 Q. And it was not heard by the jury 24 because of a decision by the judge?</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Have you ever served as a testifying 2 expert where you offered the opinion that an 3 expenditure has an opportunity cost and that 4 opportunity cost is "damages"? 5 MR. SOBOL: Objection. 6 A. I'm sorry, I missed the first part. 7 This is research, or this is testifying expert 8 you're asking about? 9 BY MR. KEYES: 10 Q. Testifying expert. 11 Have you ever served as a testifying 12 expert where you offered an opinion that an 13 expenditure has an opportunity cost, and that 14 opportunity cost is "damage"? 15 A. So this would -- there's no government 16 qualifier there. It's any expenditure? 17 Q. Correct. 18 A. So this needn't be a government 19 related case, am I -- just so I'm following? 20 Q. I asked ever. 21 A. Okay. 22 Q. So have you ever served as a 23 testifying expert where you have offered the 24 opinion that the expenditure has an opportunity</p>	<p style="text-align: right;">Page 53</p> <p>1 A. By Judge Young, yes. 2 Q. What was the basis for the judge's 3 decision to not let the jury hear your opinion? 4 A. My understanding was that -- I did a 5 series of reports in that case, and with respect 6 to one of the later reports I conducted some 7 analysis that Judge Young thought, given the way 8 the case was shaping up, in his view, that it 9 wouldn't be helpful, is my understanding. 10 Q. So what were the opinions that you 11 were offering that the judge decided the jury 12 could not hear? 13 A. The opinion was an analysis of stock 14 price movement around the announcement of the 15 settlement between the brand and the generic in 16 that case. 17 Q. What did the judge say in explaining 18 why he thought that opinion would not be helpful 19 to the jury? 20 A. I don't remember how he put it. 21 Q. Has a testifying -- has a court ever 22 barred you from offering opinions on damages? 23 A. Not so far as I know. 24 Q. Has a court ever criticized your</p>

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<p>1 approach or your methodology for quantifying</p> <p>2 damages?</p> <p>3 A. In the Marshfield case that you</p> <p>4 mentioned a bit ago, Judge Posner and I didn't</p> <p>5 see eye to eye on the kind of statistical</p> <p>6 comparisons that should be done.</p> <p>7 Q. What was Judge Posner's criticism of</p> <p>8 your approach?</p> <p>9 MR. SOBOL: Objection to the form.</p> <p>10 A. The -- I was ahead of my time a bit on</p> <p>11 that case. The analysis that I did to quantify</p> <p>12 damages is what goes now by the name of</p> <p>13 difference in difference, which is an</p> <p>14 econometric method where you identify a kind of</p> <p>15 control group, and you follow that control group</p> <p>16 forward, you follow your group forward,</p> <p>17 something happens to the group you're interested</p> <p>18 in, and you use the control group as a way to</p> <p>19 adjust for other factors.</p> <p>20 I don't think I -- I have all the</p> <p>21 respect in the world for Judge Posner, but I</p> <p>22 don't think he had seen much of this at that</p> <p>23 point, which was a number of years ago. It's</p> <p>24 now very common methodology. But my</p>	<p>1 Q. Has a court ever excluded your</p> <p>2 opinions on the ground that you failed to</p> <p>3 consider competing explanations for your</p> <p>4 findings?</p> <p>5 MR. SOBOL: Objection. Form.</p> <p>6 A. Not so far as I know.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. So have you given me every instance</p> <p>9 where a court has either excluded you from</p> <p>10 testifying as an expert, or has barred the</p> <p>11 opinions you've sought to offer, or have</p> <p>12 criticized your approach or methodology?</p> <p>13 MR. SOBOL: Objection to the form.</p> <p>14 A. I'm giving you my best recollection,</p> <p>15 yes.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. Are you a doctor?</p> <p>18 A. I'm not a medical doctor. I'm an</p> <p>19 economist.</p> <p>20 Q. Have you ever written a prescription</p> <p>21 for drugs?</p> <p>22 A. No, I never have.</p> <p>23 Q. Are you a pharmacist?</p> <p>24 A. I am not a pharmacist.</p>
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<p>1 understanding of his objection was that I didn't</p> <p>2 have explicit variables in the model to account</p> <p>3 for things that would have been adjusted for,</p> <p>4 controlled for in the difference in difference</p> <p>5 analysis.</p> <p>6 BY MR. KEYES:</p> <p>7 Q. Have there been other instances where</p> <p>8 a court has criticized your approach or</p> <p>9 methodology for quantifying damages?</p> <p>10 MR. SOBOL: Objection to the form.</p> <p>11 A. None that I can think of.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. Has a court ever barred you from</p> <p>14 offering opinions on other topics besides</p> <p>15 damages?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 A. Not that I know of.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. Has a court ever criticized the</p> <p>20 opinions you were seeking to offer on other</p> <p>21 topics besides damages?</p> <p>22 A. I don't know.</p> <p>23 Q. You can't think of an instance?</p> <p>24 A. I can't think of any.</p>	<p>1 Q. Have you ever filled a prescription</p> <p>2 for drugs?</p> <p>3 A. Not from the pharmacy side, no.</p> <p>4 Q. Are you a pharmacologist?</p> <p>5 A. No, I'm not a pharmacologist.</p> <p>6 Q. Are you a sociologist?</p> <p>7 A. No, you wouldn't say I'm a</p> <p>8 sociologist.</p> <p>9 Q. Are you an epidemiologist?</p> <p>10 A. No, I'm not an epidemiologist.</p> <p>11 Q. Have you ever worked for a</p> <p>12 manufacturer of pharmaceuticals?</p> <p>13 A. Worked for. Not in an employment</p> <p>14 relationship. As a consultant a few times.</p> <p>15 Q. In connection with litigation?</p> <p>16 A. Yes.</p> <p>17 Q. Have you ever worked as an employee of</p> <p>18 a distributor of pharmaceuticals?</p> <p>19 A. Never as an employment relationship.</p> <p>20 Q. Have you ever worked for a pharmacy?</p> <p>21 A. Not in an employment relationship.</p> <p>22 Q. Have you ever worked for a law</p> <p>23 enforcement agency?</p> <p>24 A. No.</p>

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<p>1 Q. Are you an expert in law enforcement?</p> <p>2 A. I wouldn't say I'm an expert in law</p> <p>3 enforcement, no.</p> <p>4 Q. Have you ever worked for the DEA?</p> <p>5 A. Never worked for the DEA.</p> <p>6 Q. Are you a DEA expert?</p> <p>7 A. No, I'm not a DEA expert.</p> <p>8 Q. Are you a drug policy expert?</p> <p>9 A. I work on drug policy, so I would say</p> <p>10 yes.</p> <p>11 Q. What areas, then, of drug policy do</p> <p>12 you consider yourself to have an expertise in?</p> <p>13 A. The economics of competition,</p> <p>14 regulation in the pharmacy area.</p> <p>15 Q. Anything else?</p> <p>16 A. Those are pretty general.</p> <p>17 Q. Have you ever worked for the FDA?</p> <p>18 A. No, I don't think so.</p> <p>19 Q. Are you an FDA regulatory expert?</p> <p>20 A. No, I wouldn't say I'm an FDA</p> <p>21 regulatory expert.</p> <p>22 Q. Are you an FDA labeling expert?</p> <p>23 A. No, I'm not.</p> <p>24 Q. Are you an FDA expert?</p>	<p>1 A. Not in the -- no, no.</p> <p>2 Q. In your report you periodically refer</p> <p>3 to "bellwether governments." When you do so,</p> <p>4 are you referring to Summit County and Cuyahoga</p> <p>5 County?</p> <p>6 A. Yes.</p> <p>7 Q. Are you only referring to them?</p> <p>8 A. Yes.</p> <p>9 Q. And similarly, you refer in your</p> <p>10 report to bellwether jurisdictions. When you do</p> <p>11 so, again, are you referring to Summit County</p> <p>12 and Cuyahoga County and only those two counties?</p> <p>13 A. Yes.</p> <p>14 Q. You refer in your report to</p> <p>15 prescription opioid shipments. What do you mean</p> <p>16 by that?</p> <p>17 A. I mean shipments of -- I'm not sure.</p> <p>18 I'm not clear about that question. Shipments of</p> <p>19 opioid prescriptions to local areas.</p> <p>20 Q. Well, I said, you refer in your report</p> <p>21 to prescription opioid shipments. What do you</p> <p>22 mean? And you said, I'm not sure about the</p> <p>23 question, so I want to make sure you understand</p> <p>24 the question.</p>
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<p>1 A. Well, I know some things about the</p> <p>2 FDA. But expert, I would say no.</p> <p>3 Q. Are you an expert in addiction?</p> <p>4 A. Well, one of my areas of economics</p> <p>5 expertise is what's called behavioral health,</p> <p>6 and that refers to mental health and substance</p> <p>7 abuse, and addiction falls within that, yes.</p> <p>8 Q. So how would you describe your</p> <p>9 expertise in the area of addiction?</p> <p>10 A. I'm an expert in the economics of</p> <p>11 mental health and behavioral health, and there's</p> <p>12 a lot of aspects of that.</p> <p>13 Q. You're an expert in the economics of</p> <p>14 behavioral health?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. And policy.</p> <p>18 Q. Are you an expert in pain management?</p> <p>19 A. No, I'm not.</p> <p>20 Q. Are you an expert in neonatal</p> <p>21 abstinence syndrome?</p> <p>22 A. I am not a medical expert, no, in that</p> <p>23 or other areas.</p> <p>24 Q. Are you an expert in neonatal care?</p>	<p>1 A. Okay.</p> <p>2 Q. There are references throughout your</p> <p>3 report to prescription opioid shipments. I want</p> <p>4 to make sure we're on the same page about what</p> <p>5 you're referring to when you use the phrase</p> <p>6 prescription opioid shipments.</p> <p>7 A. Okay. I'm using them -- that term in</p> <p>8 exactly the same way that Professor Cutler uses</p> <p>9 it in his report, and it is the volume of</p> <p>10 prescription opioids -- I'm trying not to use</p> <p>11 the words in the question -- sent to the local</p> <p>12 jurisdictions, the bellwether jurisdictions.</p> <p>13 Q. Sent to pharmacies in those local</p> <p>14 jurisdictions?</p> <p>15 A. They would be sent to pharmacies, yes.</p> <p>16 Q. Sent anywhere else besides pharmacies</p> <p>17 in those local jurisdictions?</p> <p>18 A. I'm not sure.</p> <p>19 Q. Where else would these prescription</p> <p>20 opioids be sent in the local jurisdictions</p> <p>21 besides pharmacies, as you understand it?</p> <p>22 A. They might be sent to healthcare</p> <p>23 providers.</p> <p>24 Q. Do you know one way or the other?</p>

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<p style="text-align: right;">Page 62</p> <p>1 MR. SOBOL: Objection to the form.</p> <p>2 A. I would have to go back and check and</p> <p>3 see what Cutler did.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. And when you refer to local</p> <p>6 jurisdictions, are you referring again to</p> <p>7 Cuyahoga County and Summit County?</p> <p>8 A. Yes.</p> <p>9 Q. And only those two counties?</p> <p>10 A. Yes.</p> <p>11 Q. In your report you refer to the opioid</p> <p>12 epidemic. What do you mean by that?</p> <p>13 A. I mean the very large death and</p> <p>14 sickness associated with opioid use.</p> <p>15 Q. Which drugs?</p> <p>16 A. The prescription opioids.</p> <p>17 Q. Do you include illegal drugs?</p> <p>18 A. It depends on the context.</p> <p>19 Q. What constitutes an epidemic, as you</p> <p>20 use the term?</p> <p>21 A. You know, a major public health issue</p> <p>22 that affects many people.</p> <p>23 Q. And when did the -- to use your term,</p> <p>24 opioid epidemic, when did it start?</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Yes.</p> <p>2 Q. And I want to understand, from your</p> <p>3 perspective based on the work you've done, when</p> <p>4 do you understand that opioid epidemic started?</p> <p>5 A. What I would say is that answering</p> <p>6 your question in the sense of when did the</p> <p>7 opioid crisis become an epidemic, it would have</p> <p>8 been a gradual process, and the threshold of,</p> <p>9 yes, we have an epidemic would have been, I</p> <p>10 don't know, at the time the acceleration in</p> <p>11 deaths took place, which is ten years ago.</p> <p>12 Q. And what is your --</p> <p>13 A. Excuse me, I want to make a</p> <p>14 distinction between that answer and when events</p> <p>15 that led to the epidemic started, which I</p> <p>16 understand to be a different question.</p> <p>17 Q. What was the peak of the opioid</p> <p>18 epidemic?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 A. Well, that depends on how you measure</p> <p>21 the epidemic. And if you measure it by deaths</p> <p>22 from opioids, we're still waiting for the peak.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. What if you measure it another way?</p>
<p style="text-align: right;">Page 63</p> <p>1 A. When did it reach epidemic</p> <p>2 proportions? Is that the nature of your</p> <p>3 question?</p> <p>4 Q. Well, you refer in your report a</p> <p>5 number of times to the opioid epidemic, and I</p> <p>6 want to understand, when did it start, the</p> <p>7 opioid epidemic?</p> <p>8 A. There's two different ways I could</p> <p>9 answer that: When did it become an epidemic,</p> <p>10 which is when the epidemic started; or when some</p> <p>11 prior causes were involved that started it, and</p> <p>12 I'm not sure.</p> <p>13 Q. When did the epidemic start? You just</p> <p>14 gave me two --</p> <p>15 A. You're not helping me here.</p> <p>16 Q. You said when -- "there's two</p> <p>17 different ways I could answer that: When did it</p> <p>18 become an epidemic, which is when the epidemic</p> <p>19 started." Okay. When did the epidemic start?</p> <p>20 MR. SOBOL: Wait. Could you just put</p> <p>21 a full question? Because I think the record is</p> <p>22 a little bit unclear right now.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. You've referred to opioid epidemic.</p>	<p style="text-align: right;">Page 65</p> <p>1 MR. SOBOL: Objection.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. You said you could measure it multiple</p> <p>4 ways. What are the other ways you could measure</p> <p>5 the peak of the opioid epidemic?</p> <p>6 A. I would tend to measure the nature of</p> <p>7 the epidemic by the harms that are caused by the</p> <p>8 epidemic, and there are various ways to do that.</p> <p>9 Some other metrics might show a different time</p> <p>10 pattern.</p> <p>11 Q. So if you use those other metrics,</p> <p>12 when do you place in time the peak of the opioid</p> <p>13 epidemic?</p> <p>14 MR. SOBOL: Objection. Form.</p> <p>15 A. Well, I wouldn't -- I think it's the</p> <p>16 kind of question that defies a single answer</p> <p>17 like "2011." As an economist interested in</p> <p>18 policy, I would want to keep track of the</p> <p>19 various kind of harms that were associated with</p> <p>20 the opioid epidemic, and some go up more</p> <p>21 quickly, some go up more slowly, some may have</p> <p>22 even peaked. It's hard to give a year answer to</p> <p>23 that question.</p> <p>24 BY MR. KEYES:</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. Have you studied the opioid epidemic?</p> <p>2 A. Well, yes, I would say yes.</p> <p>3 Q. So what has your study been?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. When you say "yes," what have you done</p> <p>7 to study the opioid epidemic?</p> <p>8 A. Well, I've written two reports on this</p> <p>9 in the last, whatever, ten months or so, that</p> <p>10 involved a lot of study. I've taught about it.</p> <p>11 That's -- I've helped prepare federal grant</p> <p>12 proposals to contend with the opioid epidemic.</p> <p>13 All those involve study.</p> <p>14 Q. In your report you refer to</p> <p>15 distributors a number of times. Who are the</p> <p>16 distributors you're referencing?</p> <p>17 A. The firms that distribute prescription</p> <p>18 opioids.</p> <p>19 Q. Can you name them?</p> <p>20 A. I can name some. Cardinal Health,</p> <p>21 McKesson.</p> <p>22 Q. Can you name any others?</p> <p>23 A. I'll stop there. Rochester Drug.</p> <p>24 Not right now, no.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. You also refer to the distributor</p> <p>2 defendants a number of times. When you use that</p> <p>3 term, who are you referring to?</p> <p>4 A. The distributors who are defendants in</p> <p>5 this case.</p> <p>6 Q. Okay. And can you name any of those</p> <p>7 besides the ones you just listed?</p> <p>8 MR. SOBOL: Objection to the form.</p> <p>9 A. Not without looking at my report.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. What do you know about the role of</p> <p>12 distributors in the supply chain?</p> <p>13 MR. SOBOL: Objection to the form.</p> <p>14 A. Well, I know in general what their</p> <p>15 role is. They take product and move it to</p> <p>16 retail.</p> <p>17 I'm not sure what you're asking.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. Have you ever studied their practices?</p> <p>20 A. In connection with some of these</p> <p>21 cases, I need to be aware of the general</p> <p>22 business practices of wholesalers. And even in</p> <p>23 my research on the economics of the pharmacy</p> <p>24 sector, you know, one needs to be aware of the</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. So when you refer to distributors in</p> <p>2 your report, you're referring to the firms that</p> <p>3 distribute prescription opioids?</p> <p>4 A. Yes.</p> <p>5 Q. And you can think of Cardinal Health,</p> <p>6 McKesson, and Rochester Drug?</p> <p>7 A. Yes.</p> <p>8 MR. SOBOL: Without the report in</p> <p>9 front of him?</p> <p>10 BY MR. KEYES:</p> <p>11 Q. Can you think of any others?</p> <p>12 MR. SOBOL: Without the report in</p> <p>13 front of him?</p> <p>14 MR. KEYES: Sure.</p> <p>15 MR. SOBOL: Just so it's clear, the</p> <p>16 report is in front of him, but you don't want</p> <p>17 him to go through the report to answer the</p> <p>18 question, right?</p> <p>19 MR. KEYES: I'd like his answer.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. What do you remember, without looking</p> <p>22 at the report? We'll look at your report later.</p> <p>23 A. Without looking at the report, I gave</p> <p>24 you the ones I can think of.</p>	<p style="text-align: right;">Page 69</p> <p>1 role of wholesalers.</p> <p>2 Q. What do you know about the role of</p> <p>3 distributors in the supply chain that only</p> <p>4 distribute to their own retail pharmacies?</p> <p>5 MR. SOBOL: Object to the form.</p> <p>6 A. What do I know about them? I'm sorry,</p> <p>7 I'm not getting the point of your question.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. Okay. Can you be more specific about</p> <p>10 the policies and practices of distributors that</p> <p>11 distribute to their own retail pharmacies?</p> <p>12 MR. SOBOL: Objection to the form.</p> <p>13 A. I'm still not sure what you're getting</p> <p>14 at here. I'm sorry, I'm just not following what</p> <p>15 you're asking.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. Okay. We'll return to that.</p> <p>18 You refer to opioids. And can you</p> <p>19 turn to Page 4 of your report? Are you there?</p> <p>20 A. Yes, I am.</p> <p>21 Q. Okay. The last sentence of</p> <p>22 Paragraph 6 in the middle of the page says, "In</p> <p>23 discussing opioids, I follow the CDC's</p> <p>24 definition, which includes both legal and</p>

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<p style="text-align: right;">Page 70</p> <p>1 illicit opioids."</p> <p>2 Do you see that?</p> <p>3 A. I do, yes.</p> <p>4 Q. Okay. So when you refer to opioids in</p> <p>5 your report, you are referring to both legal and</p> <p>6 illicit opioids, correct?</p> <p>7 A. Well, it depends on the context. And</p> <p>8 when I just -- which includes when I say both</p> <p>9 legal and illicit, footnote 9, and that explains</p> <p>10 what it means.</p> <p>11 Q. Well, footnote 9 gives a definition</p> <p>12 of -- the CDC definition of opioids, correct?</p> <p>13 A. That's right.</p> <p>14 Q. Okay. But you said in -- on Page 4</p> <p>15 that when you discuss opioids, you follow the</p> <p>16 CDC's definition, which includes both legal and</p> <p>17 illicit opioids.</p> <p>18 So I'm trying to understand, when</p> <p>19 there are references later in the report to</p> <p>20 opioids without any further clarification,</p> <p>21 you're referring to both legal and illicit</p> <p>22 opioids?</p> <p>23 MR. SOBOL: Objection. Asked and</p> <p>24 answered.</p>	<p style="text-align: right;">Page 72</p> <p>1 series of budget documents for Cuyahoga, and a</p> <p>2 series of budget documents for Summit. It's</p> <p>3 named later in my report.</p> <p>4 Q. Okay. Anything that you would add</p> <p>5 besides this budget information that you've</p> <p>6 described when you refer to analyzing data?</p> <p>7 A. That certainly was, you know, the very</p> <p>8 large majority of what I analyzed.</p> <p>9 Q. So besides budget information of the</p> <p>10 two counties, what data did you personally</p> <p>11 analyze?</p> <p>12 A. That's why I'm wondering if there</p> <p>13 might be something else that I'm not</p> <p>14 remembering. Not that I can remember here.</p> <p>15 Q. On Page 6, Paragraph 9 -- do you have</p> <p>16 that in front of you?</p> <p>17 A. Yes.</p> <p>18 Q. -- you say, "Through review of the</p> <p>19 Bellwether governments' budgets and expenditures</p> <p>20 and interviews with Bellwether government</p> <p>21 personnel, I have identified certain divisions</p> <p>22 that are affected by the opioid epidemic, listed</p> <p>23 here in Table IV.1."</p> <p>24 Do you see that?</p>
<p style="text-align: right;">Page 71</p> <p>1 A. I would have to see the context to be</p> <p>2 sure what is being meant.</p> <p>3 BY MR. KEYES:</p> <p>4 Q. Would you turn to Page 8 of your</p> <p>5 report? Paragraph 12, "In preparing this</p> <p>6 report, I, and staff under my direction:</p> <p>7 analyzed data."</p> <p>8 What specific data did you analyze?</p> <p>9 A. The data I analyzed were the budget</p> <p>10 information of the bellwether jurisdictions, the</p> <p>11 bellwether governments.</p> <p>12 Q. Can you be more specific? When you</p> <p>13 refer to the budget information, what are you</p> <p>14 referring to?</p> <p>15 A. Okay. Each year for each county</p> <p>16 there's a document that explains the functions</p> <p>17 of and the expenditures of various divisions in</p> <p>18 the county, and it's a lot of data that includes</p> <p>19 breakdowns of expenditures in a division,</p> <p>20 sometimes by purpose, sometimes by type of</p> <p>21 expenditure, and it's those data that I analyzed</p> <p>22 in order to determine damages in this case.</p> <p>23 Q. What is that document called?</p> <p>24 A. There's many documents. There's a</p>	<p style="text-align: right;">Page 73</p> <p>1 A. I do, yes.</p> <p>2 Q. When you reference interviews with</p> <p>3 bellwether government personnel, you're</p> <p>4 referring to personnel of Summit County and</p> <p>5 Cuyahoga County?</p> <p>6 A. Yes.</p> <p>7 Q. Which personnel?</p> <p>8 A. I don't remember their names.</p> <p>9 Q. Do you remember their titles?</p> <p>10 A. Oh, there were --</p> <p>11 MR. SOBOL: This is without looking at</p> <p>12 his report, correct?</p> <p>13 MR. KEYES: He has the report in front</p> <p>14 of him.</p> <p>15 MR. SOBOL: He has the report in front</p> <p>16 of him, then why don't you direct him to the</p> <p>17 page that has this information?</p> <p>18 MR. KEYES: It's his report. He says</p> <p>19 that through interviews with bellwether</p> <p>20 government personnel he has identified certain</p> <p>21 divisions that are affected by the opioid</p> <p>22 epidemic.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. I want to know who you interviewed.</p>

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<p>1 Who are these bellwether personnel to whom</p> <p>2 you're referring?</p> <p>3 MR. SOBOL: My point is there's an</p> <p>4 appendix, Materials Considered, and if you'd</p> <p>5 like him to look at that, he may, and if you</p> <p>6 want him to remember without looking at that,</p> <p>7 then he won't.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. Without looking at your report, you</p> <p>10 said -- you already said you don't remember any</p> <p>11 names. I'm asking, do you remember the titles</p> <p>12 of the people?</p> <p>13 MR. SOBOL: Without looking at the</p> <p>14 materials considered, correct?</p> <p>15 MR. KEYES: Sure.</p> <p>16 A. There were budget officials, sheriff,</p> <p>17 people from ADAMHS Board, budget director.</p> <p>18 There was about 40 in total.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. And did you personally participate in</p> <p>21 these interviews?</p> <p>22 A. No, not all, no.</p> <p>23 Q. Again, I'm asking you about the</p> <p>24 bellwether government personnel you interviewed.</p>	<p>1 A. They were all interviewed by my staff.</p> <p>2 Q. Did you interview anyone who worked</p> <p>3 for Summit County?</p> <p>4 A. I can't remember 100 percent</p> <p>5 whether -- which of the calls I may have been</p> <p>6 on. I'm sorry, I just don't remember.</p> <p>7 Q. Okay. So sitting here today, do you</p> <p>8 remember participating in any interview of</p> <p>9 anyone who works for Summit County?</p> <p>10 A. I can't remember.</p> <p>11 Q. Did you interview anyone at Cuyahoga</p> <p>12 County?</p> <p>13 A. I can't remember.</p> <p>14 Q. Sitting here today, can you remember</p> <p>15 participating in any interview of anyone who</p> <p>16 worked for Cuyahoga County?</p> <p>17 A. I can't remember.</p> <p>18 Q. So when you say "Through review of the</p> <p>19 Bellwether governments' budgets and expenditures</p> <p>20 and interviews with Bellwether government</p> <p>21 personnel, I have identified certain divisions</p> <p>22 that are affected by the opioid epidemic listed</p> <p>23 here in Table IV.1," you're referring</p> <p>24 exclusively to interviews that someone else</p>
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<p>1 A. That I personally interviewed?</p> <p>2 Q. Yes.</p> <p>3 MR. SOBOL: And you want him to do it</p> <p>4 without looking at the materials considered,</p> <p>5 correct?</p> <p>6 MR. KEYES: For the moment, yes.</p> <p>7 MR. SOBOL: Okay.</p> <p>8 MR. KEYES: I don't think there's</p> <p>9 anywhere in his report where he identifies any</p> <p>10 interview with anyone who works for Summit</p> <p>11 County or Cuyahoga County, but I don't want to</p> <p>12 waste the time at this point to scan the report</p> <p>13 for something that doesn't exist.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. I want your recollection. When you</p> <p>16 refer to interviews with bellwether government</p> <p>17 personnel, you said those are personnel of</p> <p>18 Summit County and Cuyahoga County, and I'd like</p> <p>19 to know who are those people that you</p> <p>20 interviewed?</p> <p>21 A. These people were interviewed by my</p> <p>22 staff.</p> <p>23 Q. Did you interview any of these people,</p> <p>24 to use your phrase?</p>	<p>1 conducted, correct?</p> <p>2 A. These interviews --</p> <p>3 MR. SOBOL: Object to the form.</p> <p>4 Go ahead.</p> <p>5 A. These interviews were conducted by</p> <p>6 staff under my direction.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. Okay. And did anyone take notes of</p> <p>9 these interviews of anyone who worked for Summit</p> <p>10 County or Cuyahoga County?</p> <p>11 A. I'm not sure.</p> <p>12 Q. Have you seen any notes --</p> <p>13 A. I have not.</p> <p>14 Q. -- that anyone took of any interviews</p> <p>15 of anyone who worked for Cuyahoga County or</p> <p>16 Summit County?</p> <p>17 A. No, I have not.</p> <p>18 Q. All right. So with respect to the</p> <p>19 bellwether government personnel listed here, you</p> <p>20 didn't participate in those interviews, and you</p> <p>21 don't remember the names of who was interviewed</p> <p>22 by your staff, correct?</p> <p>23 A. Well, I told you what I could</p> <p>24 recollect about that.</p>

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<p>1 Q. Okay. And you said you don't remember</p> <p>2 the names. I asked you for the titles, and you</p> <p>3 told me budget officials, the sheriff, the</p> <p>4 ADAMHS Board people, and the budget director.</p> <p>5 That's what you said so far. Can you add to</p> <p>6 that list?</p> <p>7 A. Not as I sit here, no.</p> <p>8 Q. Who interviewed the budget director</p> <p>9 for Summit County?</p> <p>10 A. Staff at Compass Lexecon.</p> <p>11 Q. Who?</p> <p>12 A. I'm not sure.</p> <p>13 Q. Who interviewed the budget director at</p> <p>14 Cuyahoga County?</p> <p>15 A. I'm not sure. It would have been</p> <p>16 staff at Compass Lex.</p> <p>17 Q. Who interviewed officials from the</p> <p>18 ADAMHS Board for Summit County?</p> <p>19 A. Staff at Compass Lex.</p> <p>20 Q. Who?</p> <p>21 A. I'm not sure.</p> <p>22 Q. Who interviewed the ADAMHS Board</p> <p>23 officials for Cuyahoga County?</p> <p>24 A. Same answer, it would have been staff</p>	<p>1 people they interviewed, correct?</p> <p>2 A. Well, I've told you what I know.</p> <p>3 Q. Were these interviews by Compass</p> <p>4 Lexecon in person or over the phone?</p> <p>5 A. They were a combination.</p> <p>6 Q. Which of these officials were</p> <p>7 interviewed in person?</p> <p>8 A. I'm not sure.</p> <p>9 Q. Which of these interviews -- officials</p> <p>10 were interviewed over the phone?</p> <p>11 A. I'm not sure.</p> <p>12 Q. How many different interviews were</p> <p>13 there with the budget officials from Summit</p> <p>14 County?</p> <p>15 A. There were about -- oh, for the budget</p> <p>16 officials only? For someone like that, there</p> <p>17 likely would have been multiple interviews.</p> <p>18 Q. You say "likely." Do you know the</p> <p>19 number of interviews that Compass Lexecon</p> <p>20 conducted of budget officials in Summit County?</p> <p>21 A. I don't know the count, no.</p> <p>22 Q. How about for the budget officials in</p> <p>23 Cuyahoga County?</p> <p>24 A. Same answer.</p>
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<p>1 at Compass Lex. I'm not sure of the name of the</p> <p>2 person.</p> <p>3 Q. Who interviewed the sheriff for Summit</p> <p>4 County?</p> <p>5 A. It would be the same answer.</p> <p>6 Q. Who interviewed the sheriff for</p> <p>7 Cuyahoga County?</p> <p>8 A. Same answer.</p> <p>9 Q. Who interviewed the budget officials</p> <p>10 for Summit County?</p> <p>11 A. Same answer.</p> <p>12 Q. Who interviewed the budget officials</p> <p>13 for Cuyahoga County?</p> <p>14 A. Same answer.</p> <p>15 Q. So what you know sitting here today is</p> <p>16 that personnel of Compass Lexecon interviewed</p> <p>17 these officials, correct?</p> <p>18 A. Yes, they did.</p> <p>19 Q. And you don't know whether they took</p> <p>20 notes, correct?</p> <p>21 A. I've never seen any notes.</p> <p>22 Q. Do you know whether they took notes?</p> <p>23 A. I'm not sure.</p> <p>24 Q. And you don't know the names of the</p>	<p>1 Q. Same answer for the sheriff for Summit</p> <p>2 County?</p> <p>3 A. Same answer.</p> <p>4 Q. Same answer for the sheriff of</p> <p>5 Cuyahoga County?</p> <p>6 A. Same answer.</p> <p>7 Q. Same answer for the ADAMHS Board</p> <p>8 officials for either Summit County or Cuyahoga</p> <p>9 County?</p> <p>10 A. Same answer.</p> <p>11 Q. Same answer for the budget director</p> <p>12 for Summit County or Cuyahoga County?</p> <p>13 A. Same answer.</p> <p>14 Q. Now, would you turn to Page 8 of your</p> <p>15 report? Paragraph 12, "In preparing this</p> <p>16 report, I, and staff under my direction:</p> <p>17 analyzed data; reviewed economic literature,</p> <p>18 court filings, documents produced in this</p> <p>19 litigation, public information and deposition</p> <p>20 testimony; and spoke with representatives of the</p> <p>21 Bellwether governments."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And again, that reference to</p>

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<p style="text-align: right;">Page 82</p> <p>1 bellwether governments is a reference to</p> <p>2 representatives of Summit County and Cuyahoga</p> <p>3 County, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And just seeing this language, does</p> <p>6 that spark any recollection of you speaking with</p> <p>7 anyone who was a representative of either Summit</p> <p>8 County or Cuyahoga County?</p> <p>9 A. No, it doesn't.</p> <p>10 Q. Okay. Would you turn to Page 28 of</p> <p>11 your report? In Paragraph 51, about halfway</p> <p>12 down there's a sentence that begins "In</p> <p>13 addition."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. "In addition, I and members of my team</p> <p>17 met with local officials to confirm my</p> <p>18 understanding of both the activities undertaken</p> <p>19 by these divisions and whether those activities</p> <p>20 had been affected by the opioid crisis."</p> <p>21 Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And when you refer to local officials,</p> <p>24 you're talking about officials of Cuyahoga</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. It says "I and members of my team."</p> <p>2 A. Yes, that's correct.</p> <p>3 Q. Okay. Is this statement accurate that</p> <p>4 you and members of your team met with local</p> <p>5 officials? Yes or no, is it accurate?</p> <p>6 MR. SOBOL: Objection.</p> <p>7 A. Yes.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. Would you turn to Page 21 of your</p> <p>10 report? Are you there?</p> <p>11 A. Yes.</p> <p>12 Q. In Paragraph 37 you say, "One transfer</p> <p>13 is 'Rev-FTS Social Services 1,' which DCFS</p> <p>14 personnel explained comes into the county as a</p> <p>15 lump sum to be used towards any social service."</p> <p>16 Do you see that language?</p> <p>17 A. I do, yes.</p> <p>18 Q. What DCFS personnel is this sentence</p> <p>19 referring to?</p> <p>20 A. I'm not sure.</p> <p>21 Q. What does DCFS stand for?</p> <p>22 A. Division of Children and Family</p> <p>23 Services.</p> <p>24 Q. And when you refer here to DCFS</p>
<p style="text-align: right;">Page 83</p> <p>1 County and Summit County, correct?</p> <p>2 A. I am.</p> <p>3 Q. Okay. But you didn't meet with any</p> <p>4 officials of Summit County or Cuyahoga County,</p> <p>5 correct?</p> <p>6 A. Well, members of my team did.</p> <p>7 Q. You said "I and members of my team met</p> <p>8 with local officials." That's not accurate,</p> <p>9 correct?</p> <p>10 A. It depends on how you regard the</p> <p>11 subject of the sentence.</p> <p>12 Q. I may be missing something, but I</p> <p>13 understand the subject to be I and my members --</p> <p>14 and members of my team.</p> <p>15 A. I think I clarified that these</p> <p>16 interviews were conducted by members of my team.</p> <p>17 Q. Exclusively?</p> <p>18 A. Not by me.</p> <p>19 Q. Right.</p> <p>20 So it is inaccurate to say, I met with</p> <p>21 local officials to confirm my understanding?</p> <p>22 MR. SOBOL: Objection to the form.</p> <p>23 A. That's not what the sentence says.</p> <p>24 BY MR. KEYES:</p>	<p style="text-align: right;">Page 85</p> <p>1 personnel, you're referring to DCFS for which</p> <p>2 county?</p> <p>3 A. This is Cuyahoga.</p> <p>4 Q. And who, if you didn't speak with the</p> <p>5 DCFS personnel, who did?</p> <p>6 A. This would have been staff at Compass</p> <p>7 Lex.</p> <p>8 Q. Which staff at Compass Lexecon spoke</p> <p>9 with DCFS personnel?</p> <p>10 A. I'm not sure.</p> <p>11 Q. When did they speak with the DCFS</p> <p>12 personnel?</p> <p>13 A. It would have been sometime in the,</p> <p>14 like I say, July to September time frame.</p> <p>15 Q. And who specifically at DCFS provided</p> <p>16 this explanation?</p> <p>17 A. I don't know.</p> <p>18 Q. Was this explanation given by these</p> <p>19 unspecified DCFS personnel in person or over the</p> <p>20 phone?</p> <p>21 MR. SOBOL: Objection to the form.</p> <p>22 A. I'm not sure.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. Did they take notes?</p>

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<p style="text-align: right;">Page 86</p> <p>1 A. I don't know.</p> <p>2 Q. So how did you come to learn what DCFS</p> <p>3 personnel explained when it came to Rev-FTS</p> <p>4 Social Services 1?</p> <p>5 A. I would have spoken to a staff member</p> <p>6 at Compass Lex about this.</p> <p>7 Q. Okay. But which staff person at</p> <p>8 Compass Lexecon did you speak with?</p> <p>9 A. I don't remember.</p> <p>10 Q. When you got an update about what</p> <p>11 budget officials for either of the counties had</p> <p>12 said, who reported to you what they said?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 A. Where are you now?</p> <p>15 BY MR. KEYES:</p> <p>16 Q. Well, earlier we talked about</p> <p>17 interviews with personnel of Summit County and</p> <p>18 Cuyahoga County. You didn't remember the names</p> <p>19 of the people, but -- and you didn't remember</p> <p>20 titles, but you said they included budget</p> <p>21 officials.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So who reported to you what</p> <p>24 these budget officials said?</p>	<p style="text-align: right;">Page 88</p> <p>1 works for Summit County or Cuyahoga County,</p> <p>2 correct?</p> <p>3 MR. SOBOL: Objection.</p> <p>4 A. Well, that's not what I said earlier.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. Did you speak with anyone who works</p> <p>7 for Summit County or Cuyahoga County?</p> <p>8 MR. SOBOL: Objection.</p> <p>9 A. I believe you already asked that, and</p> <p>10 I said I may have participated in some of the</p> <p>11 phone interviews, but I just don't remember.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. Okay. You don't remember anything</p> <p>14 that was said? If you participated in those,</p> <p>15 you don't remember what was said?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 A. I'm sorry, I don't.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. And you don't remember who those</p> <p>20 people were who participated in the interviews?</p> <p>21 A. I'm sorry, I don't.</p> <p>22 Q. So what you do know is that the</p> <p>23 references to interviews throughout this report</p> <p>24 are interviews conducted by someone at Compass</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Okay. It would have been staff at</p> <p>2 Compass Lex.</p> <p>3 Q. Who?</p> <p>4 A. I'm not sure.</p> <p>5 Q. Who reported to you what the sheriff</p> <p>6 for Summit County or Cuyahoga County said in</p> <p>7 these interviews?</p> <p>8 A. It would have been a staff member at</p> <p>9 Compass Lex, and I don't remember the person's</p> <p>10 name.</p> <p>11 Q. Who reported to you what the ADAMHS</p> <p>12 Board officials for Summit County or Cuyahoga</p> <p>13 County said in these interviews?</p> <p>14 A. It would have been a staff member at</p> <p>15 Compass Lex, and I don't remember the person's</p> <p>16 name.</p> <p>17 Q. Who reported to you what the budget</p> <p>18 director for Summit County or Cuyahoga County</p> <p>19 said in these interviews?</p> <p>20 A. It would have been a staff member at</p> <p>21 Compass Lex, and I don't remember the person's</p> <p>22 name.</p> <p>23 Q. So is it fair to say that you didn't</p> <p>24 participate in any interviews with anyone who</p>	<p style="text-align: right;">Page 89</p> <p>1 Lexecon?</p> <p>2 A. Primarily, yes.</p> <p>3 Q. Well, who else besides the people at</p> <p>4 Compass Lexecon interviewed employees of Summit</p> <p>5 County or Cuyahoga County?</p> <p>6 A. Well, I may have been involved in some</p> <p>7 of the phone interviews.</p> <p>8 Q. Right. You've said that. May, may</p> <p>9 not have been.</p> <p>10 A. I don't want you to forget it.</p> <p>11 Q. Okay. Can you tell me anything about</p> <p>12 any conversations that you participated in with</p> <p>13 anyone at Summit County or Cuyahoga County?</p> <p>14 MR. SOBOL: Objection to the form.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. Anything at all?</p> <p>17 MR. SOBOL: Objection.</p> <p>18 A. Okay. I'm thinking. I can't recall</p> <p>19 anything in particular, no.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. Okay. And who of the people you named</p> <p>22 earlier would have conducted these interviews?</p> <p>23 A. I would have expected all the people I</p> <p>24 named earlier -- not Evan, most likely not, and</p>

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<p>1 most likely not Hal. So it would have been</p> <p>2 primarily Alice and Erica.</p> <p>3 Q. And why do you say that?</p> <p>4 A. Hal and Evan had somewhat different</p> <p>5 roles.</p> <p>6 Q. If we want to reconstruct what was</p> <p>7 covered in these interviews, what would we need</p> <p>8 to do?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 A. I suppose you would need to find</p> <p>11 someone with a better memory, number one. And</p> <p>12 talk to the people who were there.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Either the people who were conducting</p> <p>15 the interview from Compass Lexecon or the people</p> <p>16 who were interviewed?</p> <p>17 A. It would be my thought, yeah.</p> <p>18 MR. KO: Okay. Andy, we've been going</p> <p>19 for about an hour and a half, so whenever -- if</p> <p>20 you reach a good point to take a break.</p> <p>21 MR. KEYES: Yes, let me just finish</p> <p>22 one point and then take a break.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. Would you turn to Page 35 of your</p>	<p>1 Q. Do you remember their functions within</p> <p>2 the divisions?</p> <p>3 A. These would be people who understand</p> <p>4 the budgets.</p> <p>5 Q. And who conducted these interviews or</p> <p>6 discussions with the so-called personnel in the</p> <p>7 respective divisions?</p> <p>8 A. This would have been staff at Compass</p> <p>9 Lexecon.</p> <p>10 Q. Do you know who?</p> <p>11 A. I'm not sure which interview was</p> <p>12 conducted by which staff member. It would have</p> <p>13 been Alice and Erica primarily.</p> <p>14 Q. And how many discussions were there</p> <p>15 with the personnel in each of these affected</p> <p>16 divisions?</p> <p>17 A. It was about 40 in total.</p> <p>18 Q. How do you know that?</p> <p>19 A. I just remember being aware of that.</p> <p>20 Q. From whom?</p> <p>21 A. I've been in contact with staff at</p> <p>22 Compass Lex, and I was interested in making sure</p> <p>23 we were doing this thoroughly enough and</p> <p>24 checking to see, well, what's happened, and</p>
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<p>1 report? Are you there?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And on Page 35, Paragraph 59,</p> <p>4 you say, "From these expenditure data, I</p> <p>5 identify those costs that would be expected to</p> <p>6 vary in response to changes in the services</p> <p>7 provided by these divisions. This</p> <p>8 identification was also informed by discussions</p> <p>9 with the personnel in the respective divisions."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. What respective divisions are</p> <p>13 you talking about? Are you talking about what</p> <p>14 you identify in your report as the affected</p> <p>15 divisions?</p> <p>16 A. Yes.</p> <p>17 Q. So which personnel in these divisions</p> <p>18 provided information that informed your</p> <p>19 identification of the costs that would be</p> <p>20 expected to vary?</p> <p>21 A. I don't remember the names.</p> <p>22 Q. Do you remember their titles?</p> <p>23 A. Only what I provided in my answer</p> <p>24 earlier.</p>	<p>1 that's the number that sticks in my mind.</p> <p>2 Q. Okay. And were these discussions with</p> <p>3 the personnel in the respective divisions over</p> <p>4 the phone or in person?</p> <p>5 A. They would have been a combination.</p> <p>6 Q. How do you know that?</p> <p>7 A. Well, I know it from talking to staff</p> <p>8 at Compass Lex.</p> <p>9 Q. Were notes taken in connection with</p> <p>10 any of these so-called discussions with the</p> <p>11 personnel in the respective divisions?</p> <p>12 MR. SOBOL: Objection to the form.</p> <p>13 A. I don't know.</p> <p>14 MR. KEYES: All right. Why don't we</p> <p>15 take a break.</p> <p>16 THE VIDEOGRAPHER: The time is</p> <p>17 10:34 a.m., and we're off the record.</p> <p>18 (Whereupon, a recess was taken.)</p> <p>19 THE VIDEOGRAPHER: The time is</p> <p>20 10:56 a.m., and we're on the record.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. Professor, you said that Compass</p> <p>23 Lexecon conducted these interviews at your</p> <p>24 direction. What directions did you give Compass</p>

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<p style="text-align: right;">Page 94</p> <p>1 Lexecon?</p> <p>2 A. Well, I wanted to confirm that the</p> <p>3 divisions involved were affected by the opioid</p> <p>4 crisis, and then to confirm that the activities</p> <p>5 that the divisions involved could be affected by</p> <p>6 the opioid crisis, and confirm an understanding</p> <p>7 of what the various budget items and cost</p> <p>8 categories consisted of.</p> <p>9 Q. You said you wanted to confirm those</p> <p>10 things.</p> <p>11 My question was, what direction did</p> <p>12 you give to Compass Lexecon before they</p> <p>13 conducted these interviews?</p> <p>14 A. Well, to seek confirmation. The</p> <p>15 material, the printed material has information</p> <p>16 about divisions' budgets and division</p> <p>17 activities, but then these need to be confirmed</p> <p>18 by interviews.</p> <p>19 Q. So did you prepare charts that set</p> <p>20 forth your understanding of which divisions were</p> <p>21 affected and which costs were affected such that</p> <p>22 those charts were then shared with personnel in</p> <p>23 Summit County or Cuyahoga County to get them to</p> <p>24 confirm your understanding?</p>	<p style="text-align: right;">Page 96</p> <p>1 describe the nature of the activities of the</p> <p>2 division which, you know, upon reading, say,</p> <p>3 okay, this might be something affected by the</p> <p>4 opioid crisis. Then it's a matter of saying,</p> <p>5 okay, are they really affected by the opioid</p> <p>6 crisis? How do we understand the cost</p> <p>7 categories within that division? As far as I</p> <p>8 know, it was all done by interview.</p> <p>9 BY MR. KEYES:</p> <p>10 Q. Okay. You said you reviewed budget</p> <p>11 documents?</p> <p>12 A. Yes.</p> <p>13 Q. And these are documents that</p> <p>14 articulate what dollars will be budgeted in a</p> <p>15 particular year for a particular division?</p> <p>16 A. Yes, more or less. Some of them are</p> <p>17 actual -- some of the actuals you would say what</p> <p>18 was spent, and some would be budgeted. For</p> <p>19 2018, I guess, was budgeted and -- 2018 was</p> <p>20 budgeted at the time we had the documents.</p> <p>21 Q. And who did the review of these budget</p> <p>22 documents, you or Compass Lexecon?</p> <p>23 A. I did a lot of the review of those</p> <p>24 documents.</p>
<p style="text-align: right;">Page 95</p> <p>1 MR. SOBOL: Objection.</p> <p>2 A. I don't recall any charts that were</p> <p>3 used.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. How about work product?</p> <p>6 A. Work product?</p> <p>7 Q. Sure. Charts, analyses. I asked you</p> <p>8 what directions you gave. You said your purpose</p> <p>9 was to confirm your understanding. So how did</p> <p>10 you or Compass Lexecon go about interviewing</p> <p>11 Summit County and Cuyahoga County officials to</p> <p>12 confirm your understanding?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 A. How did we go about it? Just a matter</p> <p>15 of talking to people. Unless I'm missing</p> <p>16 something in your question.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. Well, did you communicate to Compass</p> <p>19 Lexecon a specific understanding you had that</p> <p>20 they then needed to confirm with certain</p> <p>21 personnel?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 A. As I mentioned, the budget documents</p> <p>24 indicate how much divisions spend, and they</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. So tell me how you would look at a</p> <p>2 budget document to identify affected divisions</p> <p>3 or affected costs?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 A. Well, you -- these things are 100 or</p> <p>6 200 pages, they're public documents, and I made</p> <p>7 sure I understood the document and understood</p> <p>8 the nature of the division organization and read</p> <p>9 about the division's activities and made an</p> <p>10 initial decision about what looked to me like</p> <p>11 divisions that would be affected.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. Okay. So you reviewed these documents</p> <p>14 to identify which divisions were affected by the</p> <p>15 opioid crisis --</p> <p>16 MR. SOBOL: Objection.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. -- correct?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 A. Well, that was one of the purposes,</p> <p>21 yeah.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. And you said you made an initial</p> <p>24 decision.</p>

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<p style="text-align: right;">Page 98</p> <p>1 A. I did say that, yes.</p> <p>2 Q. Okay. And so why didn't you leave it</p> <p>3 at that, based on reviewing the budget</p> <p>4 documents? Why did you take another step?</p> <p>5 A. Well, I wanted to make sure I was</p> <p>6 going in the right direction.</p> <p>7 Q. And why weren't you certain that you</p> <p>8 were going in the right direction just based on</p> <p>9 your review of the budget documents?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 A. It just seemed prudent to me to make</p> <p>12 contact and get clarification.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Why?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 A. As I said, it just seemed sensible to</p> <p>17 talk to officials in the divisions.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. Right. But why? Why was it sensible</p> <p>20 to you to talk to officials in the affected</p> <p>21 divisions?</p> <p>22 MR. SOBOL: Objection. Asked and</p> <p>23 answered.</p> <p>24 A. I would think it's, you know, in the</p>	<p style="text-align: right;">Page 100</p> <p>1 BY MR. KEYES:</p> <p>2 Q. To identify affected divisions or</p> <p>3 affected costs.</p> <p>4 A. Well, as I say in my report, I don't</p> <p>5 think I necessarily got everything, so what I</p> <p>6 tried to do was to look where larger budget</p> <p>7 divisions were involved in terms of their</p> <p>8 spending, where it seemed more evident that</p> <p>9 these divisions would be involved in the opioid</p> <p>10 crisis, and pursue those. There are probably</p> <p>11 things left on the table in the sense of other</p> <p>12 divisions that either weren't spending a lot or</p> <p>13 not so obvious that I or the staff didn't talk</p> <p>14 to. So in the sense of not knowing everything,</p> <p>15 I probably -- I'm sure that I missed some</p> <p>16 things.</p> <p>17 Q. Okay. You say in your report at</p> <p>18 Paragraph 51, "To identify affected divisions,</p> <p>19 I, and my team under my direction, reviewed</p> <p>20 budget and expenditure information from the</p> <p>21 Bellwether governments."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. So I want you to identify with as much</p>
<p style="text-align: right;">Page 99</p> <p>1 normal course of what I would do. In the normal</p> <p>2 course of my research, if I'm trying to identify</p> <p>3 costs of some kind, and I have the opportunity</p> <p>4 to talk to people who are actually working</p> <p>5 there, that's something, you know, someone like</p> <p>6 me or an economist would generally do. It just</p> <p>7 seemed natural to me.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. It's generally your practice?</p> <p>10 A. Yeah.</p> <p>11 Q. And was it your practice here because</p> <p>12 you had some questions or some uncertainty based</p> <p>13 on your review of the budget documents?</p> <p>14 MR. SOBOL: Objection.</p> <p>15 A. Well, I review the budget documents,</p> <p>16 here's my judgment, talk to local officials to</p> <p>17 confirm the judgment.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. Did -- after you reviewed the budget</p> <p>20 documents, did you believe that they told the</p> <p>21 whole story and you had all the information you</p> <p>22 needed?</p> <p>23 MR. SOBOL: Objection.</p> <p>24 About what?</p>	<p style="text-align: right;">Page 101</p> <p>1 precision as you can what this budget</p> <p>2 information was.</p> <p>3 A. Okay. They are the annual reports of</p> <p>4 the bellwether governments about spending and</p> <p>5 revenues. The exact name of them are -- is</p> <p>6 somewhere later in my report. They come out</p> <p>7 every year.</p> <p>8 Q. Okay. So when you say that you and</p> <p>9 the team under your direction reviewed budget</p> <p>10 information, are you referring to anything</p> <p>11 besides these annual reports?</p> <p>12 A. That's what I'm referring to here.</p> <p>13 Q. Okay. And when you refer to you and</p> <p>14 your team under your direction reviewing</p> <p>15 expenditure information, what expenditure</p> <p>16 information are you talking about?</p> <p>17 A. This would be the same documents.</p> <p>18 Q. Okay. So when you refer to budget</p> <p>19 information and expenditure information, you're</p> <p>20 referring to these annual reports?</p> <p>21 A. Yes.</p> <p>22 Q. Did you look at anything besides these</p> <p>23 annual reports in order to identify affected</p> <p>24 divisions?</p>

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<p style="text-align: right;">Page 102</p> <p>1 A. I don't recall, so I don't want to say</p> <p>2 definitely no or definitely yes. I may have</p> <p>3 looked at other materials.</p> <p>4 Q. But sitting here today, what you</p> <p>5 remember looking at are the annual budget</p> <p>6 reports for Summit County and Cuyahoga County?</p> <p>7 A. Yes, I can absolutely confirm that I</p> <p>8 looked at many of those documents. I don't</p> <p>9 recollect what other ones I may have looked at.</p> <p>10 Q. Now, when you looked at these annual</p> <p>11 reports for Summit County and Cuyahoga County,</p> <p>12 what was it in the reports that helped you</p> <p>13 identify whether they were affected or not by</p> <p>14 the opioid crisis?</p> <p>15 A. Well, primarily the functions,</p> <p>16 reported functions of the division.</p> <p>17 Q. What do you mean by that, "the</p> <p>18 reported functions"?</p> <p>19 A. What they did.</p> <p>20 Q. Okay.</p> <p>21 A. For example, public safety, pursuit of</p> <p>22 criminals, Children and Family Services taking</p> <p>23 care of kids who need to be taken out of homes.</p> <p>24 Q. Anything more specific than that?</p>	<p style="text-align: right;">Page 104</p> <p>1 division had something to do with Children and</p> <p>2 Family Services you would consider it an</p> <p>3 affected division?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 A. Well, I would investigate whether it</p> <p>6 was an affected division.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. Same question for public health --</p> <p>9 MR. SOBOL: Objection.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. -- again, you would do more, you would</p> <p>12 investigate?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 A. Yes.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. So tell me what you would do to</p> <p>17 investigate. You've read the budget reports,</p> <p>18 you see that a division has something to do with</p> <p>19 crime and public safety or Children and Family</p> <p>20 Services or public health, it's now to be</p> <p>21 considered, as you said, but you need to do more</p> <p>22 and you need to investigate, right?</p> <p>23 A. Yeah, that's fair.</p> <p>24 Q. Okay. So what did you do to</p>
<p style="text-align: right;">Page 103</p> <p>1 A. Sorry, with respect to what?</p> <p>2 Q. With respect to what you saw in these</p> <p>3 annual budget documents that identified for you</p> <p>4 that they were affected by the opioid crisis.</p> <p>5 A. Okay. In general, the areas of</p> <p>6 affect, or effect, that I would be looking for</p> <p>7 have to do with crime and public safety, and so</p> <p>8 I was interested in divisions that had to do</p> <p>9 with crime and public safety. I was interested</p> <p>10 in Children and Family Services, so divisions</p> <p>11 that were active in that area were also ones I</p> <p>12 focused on. And public health.</p> <p>13 Q. Is it fair to say that if you read in</p> <p>14 the annual reports that the particular division</p> <p>15 had something to do with crime and public</p> <p>16 safety, you would consider it an effective</p> <p>17 division?</p> <p>18 MR. SOBOL: Objection.</p> <p>19 A. I would consider it to be considered.</p> <p>20 I think it's not -- you need to do more.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. Okay. Same question for child and</p> <p>23 family services, is it fair to say that if you</p> <p>24 read in the annual reports that a particular</p>	<p style="text-align: right;">Page 105</p> <p>1 investigate?</p> <p>2 A. Well, each division in the budget</p> <p>3 documents actually has a pretty extensive report</p> <p>4 on what they do and what their activities, so</p> <p>5 you do the first level investigation, then go</p> <p>6 back into the document and read more to be able</p> <p>7 to characterize more accurately the nature of</p> <p>8 how the division might be affected.</p> <p>9 Then the next -- in that process there</p> <p>10 would be interviews with the officials to make</p> <p>11 sure that we were understanding those activities</p> <p>12 correctly, and then go to the numbers, go to the</p> <p>13 cost numbers and associate the budget items or</p> <p>14 expenditure items to the activities as best we</p> <p>15 could.</p> <p>16 Q. You said you would go to the officials</p> <p>17 to confirm your understanding.</p> <p>18 A. Yes.</p> <p>19 Q. Yes?</p> <p>20 A. I said that.</p> <p>21 Q. Okay. So how did you communicate your</p> <p>22 understanding to the people who were actually</p> <p>23 going to talk to the officials?</p> <p>24 A. Well, you seem to be making this</p>

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<p style="text-align: right;">Page 106</p> <p>1 process more complicated than it was. We</p> <p>2 understand how the opioid crisis can impact</p> <p>3 families, how it can impact crime, how it can</p> <p>4 impact public health. There didn't need to be a</p> <p>5 lot of explanation to be able to confirm that</p> <p>6 police officers were not only arresting drug</p> <p>7 criminals, but they would have been involved in</p> <p>8 first responder activities. They may be the</p> <p>9 first on the scene with an opioid overdose.</p> <p>10 Firefighters may be the first on the scene with</p> <p>11 respect to opioid overdose. I'm confident that</p> <p>12 I and members of my team had a joint</p> <p>13 understanding of what we are looking for in</p> <p>14 these divisions in terms of the nature of their</p> <p>15 activities and how might they be influenced by</p> <p>16 the opioid crisis.</p> <p>17 Q. When you refer to your team --</p> <p>18 MR. SOBOL: Have you finished your</p> <p>19 answer?</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. When you refer to your team having a</p> <p>23 joint understanding, you're referring to</p> <p>24 yourself and the Compass Lexecon personnel?</p>	<p style="text-align: right;">Page 108</p> <p>1 answer.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. Because you --</p> <p>4 MR. SOBOL: He has not finished his</p> <p>5 answer.</p> <p>6 A. I do have one more sentence to say</p> <p>7 about that.</p> <p>8 I've already -- we've already</p> <p>9 discussed this extensively, and it was primarily</p> <p>10 done by Compass Lexecon, and I don't remember</p> <p>11 whether or not I was involved in some of the</p> <p>12 calls.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Right.</p> <p>15 But you formed an understanding based</p> <p>16 on the review of these budget reports you've</p> <p>17 already described, and you wanted to confirm</p> <p>18 that understanding. How did you communicate</p> <p>19 your understanding to the Compass Lexecon people</p> <p>20 who then went to the local officials to confirm</p> <p>21 that understanding?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 A. I'm going to repeat myself, because it</p> <p>24 wasn't that complicated. I think we had a joint</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Yes, I am.</p> <p>2 Q. Okay. Again, I'm just trying to</p> <p>3 understand what you did. So you said you</p> <p>4 reviewed these budget reports. You said if it</p> <p>5 had to do with public safety, children and</p> <p>6 family services, or crime that you would -- or</p> <p>7 public health, you would identify it as a</p> <p>8 potentially affected division, but you had to do</p> <p>9 more. You said that you then went and read more</p> <p>10 about those divisions in the budget documents,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And then you said at some point you</p> <p>14 went to the officials of the two counties to</p> <p>15 confirm your understanding, right?</p> <p>16 A. That's correct.</p> <p>17 Q. But you didn't talk to those officials</p> <p>18 yourself?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 A. Well, I think we've covered this</p> <p>21 already.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. Right, because you --</p> <p>24 MR. SOBOL: He hasn't finished his</p>	<p style="text-align: right;">Page 109</p> <p>1 understanding of what it means to be impacted by</p> <p>2 the opioid crisis. Crime, kids, services</p> <p>3 needed, first responders, this wasn't higher</p> <p>4 math, what we're looking for here.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. Did you give written directions to</p> <p>7 Compass Lexecon setting forth your understanding</p> <p>8 and what they should try to confirm with the</p> <p>9 local officials?</p> <p>10 A. No, I don't think so.</p> <p>11 Q. And when the Compass Lexecon personnel</p> <p>12 spoke with the local officials, did they ever</p> <p>13 report back to you on what they learned?</p> <p>14 A. Yes, they did.</p> <p>15 Q. And what did they tell you about these</p> <p>16 interviews with these officials that confirmed</p> <p>17 your understanding of which divisions were</p> <p>18 affected?</p> <p>19 MR. SOBOL: Generally speaking.</p> <p>20 A. They, after the interviews, had a</p> <p>21 confirmation that the budget categories were</p> <p>22 correct and being potentially affected by the</p> <p>23 opioid crisis.</p> <p>24 BY MR. KEYES:</p>

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<p>1 Q. And was it at that point that then you</p> <p>2 moved to the second step, which is for each</p> <p>3 affected division to identify what you call</p> <p>4 affected costs?</p> <p>5 MR. SOBOL: Objection.</p> <p>6 A. Broadly speaking, that's correct.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. And in your approach, affected costs</p> <p>9 are costs that vary as the composition of</p> <p>10 opioid-related services provided by that</p> <p>11 division changes?</p> <p>12 A. Broadly that's correct.</p> <p>13 Q. Okay. And you -- go ahead.</p> <p>14 A. They may vary in the activity against</p> <p>15 which they're directed.</p> <p>16 Q. And you break so-called affected costs</p> <p>17 down into two buckets, compensation costs and</p> <p>18 non-compensation costs, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. So I want to review your</p> <p>21 process for identifying the affected costs for</p> <p>22 any particular affected division. Okay? You</p> <p>23 say you looked at detailed expenditure data for</p> <p>24 Cuyahoga County.</p>	<p>1 MR. SOBOL: That's referenced here.</p> <p>2 A. I would -- I don't remember what</p> <p>3 014627783 is.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. Well, you say that -- let's turn this</p> <p>6 over -- you also received expenditure data for</p> <p>7 Summit County from the county government, and</p> <p>8 you list SUMMIT_001952976.</p> <p>9 Do you see that?</p> <p>10 A. I do, yes.</p> <p>11 Q. Did you look at any other expenditure</p> <p>12 data for Summit County?</p> <p>13 A. I looked at every year for these</p> <p>14 places.</p> <p>15 Q. Okay.</p> <p>16 A. And I don't remember the footnotes or</p> <p>17 what these things exactly are referring to, but,</p> <p>18 yeah, a lot of documents.</p> <p>19 Q. So were these budget documents or</p> <p>20 something different when you reference this</p> <p>21 expenditure data?</p> <p>22 A. Well, I --</p> <p>23 MR. SOBOL: Objection to form.</p> <p>24 A. The expenditure data were actuals that</p>
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<p>1 A. Yes, I did.</p> <p>2 Q. And you say you looked at expenditure</p> <p>3 data for Summit County.</p> <p>4 A. I did.</p> <p>5 Q. Would you turn to Page 34 of your</p> <p>6 report?</p> <p>7 A. Sure.</p> <p>8 Q. Are you there?</p> <p>9 A. Yes.</p> <p>10 Q. At the bottom of Page 34 you say,</p> <p>11 "Detailed expenditure data for Cuyahoga County</p> <p>12 were obtained from the Cuyahoga County Budget</p> <p>13 Office for all divisions and departments within</p> <p>14 these divisions."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And then you drop a footnote, footnote</p> <p>18 82, which references one document, Bates number</p> <p>19 CUYAH_014627783.</p> <p>20 Do you see that?</p> <p>21 A. I do, yes.</p> <p>22 Q. Okay. So is that the document that</p> <p>23 contains this detailed expenditure data for</p> <p>24 Cuyahoga County?</p>	<p>1 came from the annual reports which were actual</p> <p>2 expenditures.</p> <p>3 The budgeted, as I mentioned earlier,</p> <p>4 I believe, referred just to the last year.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. So other than the two files that are</p> <p>7 listed here in these footnotes, what expenditure</p> <p>8 data did you look at for either Cuyahoga County</p> <p>9 or Summit County?</p> <p>10 A. Well, as I said, I don't know exactly</p> <p>11 what this Bates is referring to or the one in</p> <p>12 footnote 83 without checking exactly what</p> <p>13 documents are referred to there, but I looked at</p> <p>14 the budget documents for all the years for both</p> <p>15 jurisdictions.</p> <p>16 Q. Other than the budget documents, did</p> <p>17 you look at any expenditure data?</p> <p>18 A. By that I mean expenditure data. I</p> <p>19 try to keep that clear, but maybe I haven't been</p> <p>20 as clear as I should be on that.</p> <p>21 So for the years up through, I</p> <p>22 believe, 2017, these are reports of what was</p> <p>23 actually spent by category and sometimes by line</p> <p>24 item in these affected divisions. For 2018, the</p>

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<p style="text-align: right;">Page 114</p> <p>1 actuals were not yet in at the time I did this, 2 and there the budgets needed to be looked at. 3 So they were planned expenditures, you would 4 say. 5 Q. So is it one document that contained 6 all the expenditure data for Cuyahoga County up 7 through 2017? 8 A. Some of the documents included more 9 than one year, but there was an annual report 10 every year. 11 Q. Okay. Same question for Summit 12 County, was it one document that contained all 13 the expenditure data for Summit County up 14 through 2017? 15 A. Some of the documents included more 16 than one year, but it was a report for each 17 year. 18 Q. Okay. Well, you tell me, because you 19 say in the very next sentence, Paragraph 59, you 20 say, "From these expenditure data, I identify 21 those costs that would be expected to vary in 22 response to changes in the services provided by 23 these divisions." 24 Do you see that?</p>	<p style="text-align: right;">Page 116</p> <p>1 there is multiple tables that describe in 2 summary form and in detail form what the 3 spending is for each unit per division. 4 Q. How did you use that data, then, to 5 identify what you call affected costs? 6 A. Okay. The purpose here is to 7 identify, as you said in your earlier question, 8 costs that might vary as the demands put on 9 public services by the opioid crisis vary. 10 So, for example, there will be some 11 costs that do not fall in that category. If 12 there's an IT system and IT staff with respect 13 to the police department, I made the assumption 14 for labor categories that seemed to be 15 associated with kind of fixed costs or 16 overhead-type expenditures that those people 17 would not -- the cost associated with those 18 people would not be affected as the opioid 19 crisis went up or down. 20 But there was other personnel such as 21 police officers who are involved in crime 22 prevention who would be affected by the opioid 23 crisis. And the budget documents are actually 24 quite detailed in terms of the job title, the</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Yes. 2 Q. And these expenditure data refers to 3 the two documents that were noted in footnotes 4 82 and 83 -- 5 MR. SOBOL: Objection. 6 BY MR. KEYES: 7 Q. -- correct? 8 MR. SOBOL: Objection. 9 A. Well, I think I've commented on the 10 particular Bates numbers in those footnotes. 11 And I don't know exactly what that's referring 12 to, so it's hard for me to answer precisely with 13 respect to that Bates number. But what I can 14 tell you is I looked at expenditure data for 15 each division for each bellwether for each year. 16 BY MR. KEYES: 17 Q. So describe that data for me. 18 MR. SOBOL: Objection. 19 BY MR. KEYES: 20 Q. Tell me what you looked at. 21 A. It comes in a big book, and it is 22 organized around the organization of the 23 government. And then there are divisions and 24 sometimes departments within divisions, and</p>	<p style="text-align: right;">Page 117</p> <p>1 salaries of these people, enabling me in most 2 cases to be -- to make a pretty good 3 determination, in my view, that the costs are 4 allocated reasonably between those that might 5 and might not be affected by the waxing and 6 waning of demands presented by opioids. 7 Q. So you would do this based on -- what 8 information -- 9 MR. SOBOL: You just asked an 10 open-ended question. You should find out 11 whether the witness has finished his answer. 12 BY MR. KEYES: 13 Q. Have you finished with your answer? 14 A. Yes, I am. 15 Q. So how did you go about specifically 16 going through the expenditure data to determine 17 whether something was overhead or not overhead? 18 A. It was, you know, my judgment based on 19 the job activities of the people involved. 20 Q. Did you use someone else's judgment to 21 assist you, or solely your judgment? 22 A. I think we discussed it as a team at 23 different times, yeah. 24 Q. Who else did you discuss it with?</p>

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<p style="text-align: right;">Page 118</p> <p>1 A. This would have been a Compass Lex 2 team effort. 3 Q. Who? 4 A. Same team we discussed. Hal would 5 have been in this, I'm not sure about Evan, but 6 Alice and Erica. 7 Q. And then how would you know whether 8 something was fixed or not, to use your term, 9 based on your review of the expenditure data? 10 A. Well, once I made a determination that 11 I put it into fixed costs, if it weren't fixed 12 then I'm being conservative, so I tried to be 13 reasonable and even conservative in that 14 allocation. And if I put the IT staff in the 15 fixed cost area, even if they're not, even if 16 more crimes lead to overtime of the IT guys, 17 then since I'm not counting it, I didn't worry 18 about it after that. 19 Q. You've identified IT as an example of 20 a fixed cost, right? 21 A. Yes. 22 Q. My question is broader than that. 23 When you're looking through the costs 24 in the expenditure data, how do you determine</p>	<p style="text-align: right;">Page 120</p> <p>1 A. I mean, it would have been the same 2 process. Talking to them. 3 Q. So did you have a list that broke out 4 all of the costs into variable costs and fixed 5 costs, and that list was then provided to 6 Compass Lexecon, and Compass Lexecon reviewed it 7 with personnel from Summit County or Cuyahoga 8 County? 9 MR. SOBOL: Objection. 10 A. It wasn't as mechanical as that. 11 There had to be a classification into one or the 12 other, so in that sense, yes, there was a list 13 for each of the, you know, many, many 14 expenditure categories for a particular 15 division. So this was no, this was yes, this 16 was no, this is yes. So that's -- in a sense 17 there was a list. 18 The list wasn't -- didn't come from me 19 to them. It came as a team effort to determine 20 which of the things belong in one category or 21 the other, and then it's confirmation that -- 22 you know, it's not mechanical, but general 23 confirmation with officials in the local 24 jurisdictions.</p>
<p style="text-align: right;">Page 119</p> <p>1 whether that cost is fixed or not? 2 A. It was a matter of judgment. 3 Q. Okay. And how did you bring your 4 judgment to bear to determine for any particular 5 cost whether it was fixed or not? 6 A. Well, economists deal in costs of 7 different types, there's marginal costs, there's 8 variable costs, there's fixed costs, so as just 9 general training one is oriented to this kind of 10 distinction. And I went through the budget, in 11 many cases job title by job title, to make a 12 determination of, with respect to the 13 compensation costs, where people belonged in one 14 or the other. 15 Q. So you looked at this expenditure 16 data, you used your judgment to determine 17 whether it was fixed or not, overhead or not? 18 A. Broadly speaking, that's correct. 19 Q. Okay. And then you say "This 20 identification" -- that is, the identification 21 of varied costs, variable costs -- "was also 22 informed by discussions with the personnel in 23 the respective divisions." 24 How was that accomplished?</p>	<p style="text-align: right;">Page 121</p> <p>1 BY MR. KEYES: 2 Q. What do you mean it's not mechanical? 3 A. Well, it is what I just described it 4 to be, which to me wasn't a mechanical Tom's 5 list, CL's list, send list to officials. It 6 was, we made this determination, we checked with 7 them with respect to some things that might have 8 been unclear. 9 Q. When you said "we made the 10 determination," you're talking about you and 11 your Compass Lexecon team? 12 A. Yes, that was inputs from not just me. 13 Q. And based on the inputs from your team 14 and your judgment, you took every cost and you 15 put it into one category or the other, it was 16 either variable or it was fixed, correct? 17 MR. SOBOL: Objection. 18 A. Basically that's the methodology, yes. 19 BY MR. KEYES: 20 Q. What steps were taken then to take 21 that list that breaks every cost into variable 22 or fixed and confirm it with someone at the 23 county? 24 MR. SOBOL: Objection. Asked and</p>

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<p style="text-align: right;">Page 122</p> <p>1 answered.</p> <p>2 A. There, in most cases it's pretty clear</p> <p>3 where a certain cost belongs, and in those cases</p> <p>4 it's just pretty clear.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. Meaning no one followed up with</p> <p>7 someone at Summit County or Cuyahoga County,</p> <p>8 correct?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 A. Well, everything wasn't cleared with</p> <p>11 officials in Summit County. If I were confident</p> <p>12 that it was a variable cost, then I'm prepared</p> <p>13 to stand behind it.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. Okay. So I understand you formed your</p> <p>16 judgment, every cost category was put into</p> <p>17 variable cost or fixed cost, Compass Lexecon</p> <p>18 participated in that process, correct?</p> <p>19 A. Yes.</p> <p>20 Q. If I understand you correctly, you</p> <p>21 said that not every determination was then</p> <p>22 cleared with officials from Summit County or</p> <p>23 Cuyahoga County because you were so confident</p> <p>24 you got it right --</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. SOBOL: Objection.</p> <p>2 A. Well, let me give you an example which</p> <p>3 I think will be helpful in understanding.</p> <p>4 Initially the costs associated with</p> <p>5 vehicles, police cars, was not put in the</p> <p>6 variable category, and that seemed to me to be</p> <p>7 overly conservative, that if police are riding</p> <p>8 around and dealing with opioid problems they're</p> <p>9 going to use their cars more frequently, and</p> <p>10 some of their auto expenses would be properly</p> <p>11 regarded as variable. So that means, okay, what</p> <p>12 about this cost. We went back into the</p> <p>13 documents, looked at the capital costs. Some of</p> <p>14 them are in the capital budgets as opposed to in</p> <p>15 the expenditure budget, so we take a look at</p> <p>16 that, and what should be done about that.</p> <p>17 And I'm not 100 percent sure that this</p> <p>18 would have been talked about with the local</p> <p>19 official, but that's an example of the kind of</p> <p>20 thing where there was some uncertainty about how</p> <p>21 we should handle police cars.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. But I'm trying to get to your</p> <p>24 methodology as a general matter.</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. SOBOL: Objection.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. -- right?</p> <p>4 A. In many cases I was very confident</p> <p>5 that this determination was correct.</p> <p>6 Q. Okay. But there are other instances</p> <p>7 where you weren't very confident, where there</p> <p>8 was some step to go to the officials to confirm</p> <p>9 your judgment as to whether it was a fixed or a</p> <p>10 variable cost, right?</p> <p>11 A. I believe there were some that were</p> <p>12 unclear, and there was -- some additional work</p> <p>13 had to be done by Compass Lex to make that</p> <p>14 determination.</p> <p>15 Q. Which ones were unclear?</p> <p>16 A. I don't remember.</p> <p>17 Q. And so for the ones that were unclear,</p> <p>18 I realize you don't remember which ones they</p> <p>19 were, but the ones that were unclear, you say</p> <p>20 some additional work had to be done. I take it</p> <p>21 that work was to go to people at Summit County</p> <p>22 or Cuyahoga County to get them to tell you</p> <p>23 whether you were right in either calling that</p> <p>24 cost variable or fixed?</p>	<p style="text-align: right;">Page 125</p> <p>1 You've gone through all of the costs</p> <p>2 for each of the affected divisions, and you've</p> <p>3 made a judgment whether that -- each cost is</p> <p>4 fixed or variable. You said some you were very</p> <p>5 confident about.</p> <p>6 A. Most I was very confident about.</p> <p>7 Q. And those didn't require any further</p> <p>8 confirmation?</p> <p>9 A. Not in my view.</p> <p>10 Q. But there were others where you were</p> <p>11 not very confident, correct?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 A. Well, I just gave you an example of</p> <p>14 one.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. Okay.</p> <p>17 A. That sort of looks like a fixed cost,</p> <p>18 but on the other hand, you can make an argument</p> <p>19 it's a variable cost.</p> <p>20 Q. And how do we reconstruct which ones</p> <p>21 you were very confident about and which ones you</p> <p>22 weren't?</p> <p>23 A. I'm confident in all the</p> <p>24 classifications that are available to you.</p>

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<p style="text-align: right;">Page 126</p> <p>1 Q. How do we reconstruct which ones you 2 were very confident on and which ones you were 3 not very confident based on your review of the 4 cost categories before you sought confirmation 5 from some unspecified local officials? 6 MR. SOBOL: Objection. 7 BY MR. KEYES: 8 Q. Is there any way to reconstruct that 9 now? 10 MR. SOBOL: Objection. 11 A. I'm not sure that would be -- I think 12 it's -- I'm sure you and everyone has been 13 involved in these complicated decisions about 14 something that is mostly conversation, and it's 15 hard for me to think how one would reconstruct 16 that beyond talking to the people. 17 But even then, like, I can't tell you 18 necessarily which of the categories, what we 19 thought about IT, what we thought about health 20 insurance costs, whether they would be regarded 21 as fixed or variable. All those things were 22 considered, and it was a process is all I can 23 tell you. 24 BY MR. KEYES:</p>	<p style="text-align: right;">Page 128</p> <p>1 everything into a variable, but to explicitly 2 set aside stuff that -- cost categories that 3 wouldn't seem in the short run to vary with the 4 nature of, say, crime or the nature of why a 5 child is taken from a home, why a corpse comes 6 into the medical examiner. There's some things 7 that don't vary with that, which I set aside. 8 BY MR. KEYES: 9 Q. Can you identify which of the cost 10 categories you were not confident about based on 11 your review of the expenditure data such that 12 someone from Compass Lexecon went out to local 13 officials to get some kind of confirmation? 14 MR. SOBOL: Objection. Asked and 15 answered twice. 16 BY MR. KEYES: 17 Q. Can you identify those today? 18 MR. SOBOL: Objection. Asked and 19 answered twice. 20 A. I believe I answered that question 21 completely a few minutes ago. If you'd like me 22 to take another shot at it, I'm happy to do 23 that. The cost categories that you see in my 24 report, I'm confident in all those cost</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Okay. But again -- 2 A. Excuse me. 3 The answer to that process of what I 4 decided is described exactly in this report, and 5 I'm very confident that the variable costs are 6 variable, and if there's some evidence or some 7 question you have about any particular cost, 8 then I'm all for talking about it. 9 Q. Okay. But which ones of those are you 10 very confident about now because of the 11 reassurance Compass Lexecon got from Summit 12 County and Cuyahoga County officials? 13 MR. SOBOL: Objection. 14 A. I wouldn't have included something in 15 the variable cost category unless I were 16 confident about it. Some of them seemed obvious 17 to me. And compensation for beat cops, that's a 18 variable cost. Some others, I don't remember 19 the process, it may have been a team discussion, 20 it may have been a confirmation with officials, 21 but it was ultimately an economic decision about 22 what are the variable costs associated with 23 these divisions, taking what I considered to be 24 a pretty conservative approach and not putting</p>	<p style="text-align: right;">Page 129</p> <p>1 categories. I use my judgment as an economist 2 to identify what I thought were variable costs. 3 Some of this involved discussion with team 4 members who may have been more familiar with 5 some of the operations of the division, and some 6 of it may have involved confirmation with local 7 officials, but I don't remember. 8 BY MR. KEYES: 9 Q. I'm not asking you about confidence 10 today. 11 MR. SOBOL: He's not finished. 12 A. One more second. 13 BY MR. KEYES: 14 Q. You're not answering my question. 15 MR. SOBOL: You're interrupting his 16 answer. 17 MR. KEYES: I am, because he said it 18 before, and he's not answering the question. 19 BY MR. KEYES: 20 Q. Do you understand the question? 21 MR. SOBOL: He understands the 22 question. If you want to interrupt him, 23 interrupt him, but he's going to continue the 24 answer to the question when you finish your</p>

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<p>1 interruption.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. Do you understand my question?</p> <p>4 MR. SOBOL: Don't answer that</p> <p>5 question. Finish answering the other question</p> <p>6 that he asked so he doesn't create a record</p> <p>7 which is inaccurate.</p> <p>8 A. I was about to wrap up and say while</p> <p>9 I'm confident in all the cost allocations that</p> <p>10 are made in my report, I don't remember, you</p> <p>11 know, which one would have been -- at what stage</p> <p>12 the confidence arose.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. So can you identify for me now which</p> <p>15 of the cost categories you are not confident</p> <p>16 about based on your review of the expenditure</p> <p>17 data such that someone from Compass Lexecon went</p> <p>18 out to local officials to get some kind of</p> <p>19 confirmation?</p> <p>20 MR. SOBOL: Asked and answered four</p> <p>21 times.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. Can you identify those categories?</p> <p>24 MR. SOBOL: Asked and answered four</p>	<p>1 allocation in my report between variable and not</p> <p>2 variable costs is ones -- is an allocation that</p> <p>3 I'm comfortable with -- more than comfortable</p> <p>4 with, I'm confident in. Some of those were such</p> <p>5 that it seemed obvious to me as an economist</p> <p>6 that a cost category such as a beat cop would be</p> <p>7 one that, okay, we're going to make this</p> <p>8 variable, and that doesn't need discussion with</p> <p>9 the team, that doesn't need any kind of</p> <p>10 follow-up at all.</p> <p>11 Other cost categories were ones that I</p> <p>12 needed more. Police cars are a good example of</p> <p>13 that. It seemed to me it's in the capital</p> <p>14 budget. So maybe I think capital is fixed, but</p> <p>15 on the other hand, cars wear out. The more</p> <p>16 driving around police do, the faster they wear</p> <p>17 out. It seemed after consideration and</p> <p>18 discussion with my team that some of the police</p> <p>19 car costs should be put into the variable cost</p> <p>20 category. There were others that would have</p> <p>21 needed confirmation from local officials. I'm</p> <p>22 not sure which those were.</p> <p>23 But in the end, I stand by all of my</p> <p>24 classifications, and if there's any one you want</p>
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<p>1 times.</p> <p>2 A. I'm not sure what I said earlier did</p> <p>3 not answer that question.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. It's a yes-or-no question.</p> <p>6 A. If you want me to repeat the answer,</p> <p>7 I'm happy to do that.</p> <p>8 Q. I don't want you to explain what you</p> <p>9 think now and why you're confident now. I'm</p> <p>10 trying to understand which ones were so obvious</p> <p>11 to you based on your review of the expenditure</p> <p>12 data and which ones you said, this is my</p> <p>13 judgment, but I'm not certain, we should go</p> <p>14 check with the local officials. And I can't get</p> <p>15 an answer from you as to which ones those were.</p> <p>16 I want to know which ones required</p> <p>17 going out to local officials. Can you tell me</p> <p>18 which ones those were?</p> <p>19 MR. SOBOL: Andrew, I think you're</p> <p>20 frustrated because you haven't listened to his</p> <p>21 answers. If you'll listen to the answer, you'll</p> <p>22 hear the answer to the question in it. He'll</p> <p>23 repeat himself, but you're not listening.</p> <p>24 A. I want to make clear that every</p>	<p>1 to question, please bring it up.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. Is there any way to reconstruct which</p> <p>4 cost categories fell into the three buckets you</p> <p>5 just outlined?</p> <p>6 MR. SOBOL: Objection.</p> <p>7 A. My memory would not be probably the</p> <p>8 best way to do that, but one could attempt to</p> <p>9 talk to the people involved and do the best you</p> <p>10 can in a reconstruction.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. Is there any other way besides talking</p> <p>13 to the people at Compass Lexecon to determine</p> <p>14 which cost categories fell into each of the</p> <p>15 three budgets you outlined?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 A. I can't think of any.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. Would you turn to Page 39 of your</p> <p>20 report. Paragraph 69, you say, "The approaches</p> <p>21 for other Bellwether divisions generally follow</p> <p>22 the examples above; however, there are</p> <p>23 idiosyncrasies within the Bellwether divisions</p> <p>24 that require modifications of this approach for</p>

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<p style="text-align: right;">Page 134</p> <p>1 some divisions and/or years." 2 Do you see that? 3 A. Yes. 4 Q. What are the idiosyncrasies to which 5 you are referring? 6 A. Let me see what this is here. 7 So what I'm doing in the report here 8 is explaining for the reader how this works, and 9 it is -- involves a lot of work with a lot of 10 numbers for divisions. And what I chose to do 11 in the report was to pick out one of the 12 divisions and explain in detail how that 13 decision about affected cost gets determined. I 14 didn't want the reader to think that this is 15 exactly the way it happened in every division. 16 So by idiosyncrasies, it just means it 17 depends on the division how one would kind of 18 make these different determinations. The total 19 cost would be pretty much the same. The costs 20 associated with wages and salaries and benefits, 21 those are common to all the divisions. 22 Then the overhead adjustment, that's 23 where differences creep in. There are 24 idiosyncrasies with respect to the nature of</p>	<p style="text-align: right;">Page 136</p> <p>1 was a description of the steps, but the actual 2 application of those in each division varied 3 somewhat. 4 Q. Did you write this report? 5 A. Yes, I did. 6 Q. You actually drafted the language? 7 A. Yes. 8 Q. Would you turn to Paragraph 65. 9 That's on Page 37. And you discussed the 10 overhead adjustment factor. 11 A. Yes. 12 Q. You say that you identified the 13 "personnel involved in activities that are 14 unlikely to be related to providing services 15 that are affected by opioids." 16 Do you see that? 17 A. Yes. 18 Q. Okay. And are you able to tell me 19 anything more than what you've already said 20 about how you went about identifying those 21 personnel for purposes of calculating your 22 overhead adjustment factor? 23 MR. SOBOL: Objection. 24 A. Well, beyond the statement that it's a</p>
<p style="text-align: right;">Page 135</p> <p>1 overhead adjustment in each of the divisions. 2 Q. Are there -- you referred to 3 idiosyncrasies in terms of your overhead 4 adjustment. Are you referring to any other 5 idiosyncrasies? 6 A. Well, given 1, 2 and 3, where 7 idiosyncrasies come in within the terms of 3, 8 then 4 follows. That's just a multiplication. 9 More idiosyncrasies come in on the affected 10 non-compensation costs. Some divisions, for 11 example, contract out for services. Most don't. 12 And so those contracting out for services need 13 to be considered as part of a variable cost, and 14 a determination is made. 15 But it's not the same cookie-cutter 16 division by division. It depends on what they 17 do. It depends on what they spend their money 18 on. Then we got affected non-compensation costs 19 offset to affected compensation costs. This 20 offset could be a governmental transfer, for 21 example, that's division-specific, so that's 22 another source of idiosyncrasy. And the same 23 with non-compensation costs. 24 So I don't know, you have to -- this</p>	<p style="text-align: right;">Page 137</p> <p>1 division-by-division decision and allocation of 2 particular job titles into those two different 3 categories which depends on the division. 4 BY MR. KEYES: 5 Q. Once you thought you had identified 6 the personnel who were involved in activities 7 unlikely to be related to providing services 8 that are affected by opioids, did you take any 9 steps to validate your identification to confirm 10 you got it right? 11 A. Well, in the case of that decision, 12 suppose I take a police chief and say, chief, 13 you're not -- we have to keep you around anyway, 14 and you're not variable with respect to demands 15 on opioids. If I'm right, I'm right. If I'm 16 wrong, I'm being conservative. 17 So by the nature of this allocation, 18 it's being at least conservative. So even if 19 there were some variable costs in that cost 20 category, as long as I'm not counting them, then 21 I'm being conservative in the report. 22 Q. You just explained to me why you think 23 you were being conservative. That wasn't my 24 question.</p>

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<p>1 My question was, what steps did you</p> <p>2 take to investigate and confirm that you got it</p> <p>3 right when you identified people who you thought</p> <p>4 were involved in activities unlikely to be</p> <p>5 related to providing services affected by</p> <p>6 opioids?</p> <p>7 MR. SOBOL: Objection. Asked and</p> <p>8 answered.</p> <p>9 A. This is really an example of the kind</p> <p>10 of question we went around and around on a bit</p> <p>11 ago. This is a classification issue. Do they</p> <p>12 belong over here? Do they belong over there?</p> <p>13 And the way I answered that question</p> <p>14 was saying that on the basis of my kind of</p> <p>15 experience and training as an economist, I felt</p> <p>16 confident in some. Some needed team</p> <p>17 discussions, some needed beyond that, maybe</p> <p>18 there's something the local officials can help</p> <p>19 with. I don't remember which of these</p> <p>20 allocations fell into where in that process each</p> <p>21 of those allocations worked themselves out.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. When you identified what you consider</p> <p>24 to be affected non-compensation costs, what</p>	<p>1 these three buckets? Bucket is my word, but</p> <p>2 you're dividing them into three groups?</p> <p>3 A. I'm describing a three-step process.</p> <p>4 The bucket analogy or metaphor is kind of</p> <p>5 oversimplification and would seem to indicate</p> <p>6 that there's a bright line between this bucket,</p> <p>7 that bucket, and that bucket. And these are --</p> <p>8 it's a process.</p> <p>9 Q. But can you tell me which of those</p> <p>10 affected non-compensation costs you sought</p> <p>11 confirmation for?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 A. Well, this is another version of the</p> <p>14 question I talked about earlier, and in this</p> <p>15 process of making a determination of in that</p> <p>16 bucket or this bucket, some I felt confident I</p> <p>17 could make on my own, some were discussion, more</p> <p>18 discussion, some would have involved checking.</p> <p>19 I can't tell you sitting here which of those --</p> <p>20 where they fell out in that process into being</p> <p>21 put into one bucket or the other.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. Once you identified what you</p> <p>24 considered to be the affected divisions, and</p>
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<p>1 steps did you take to investigate or test your</p> <p>2 belief that those affected non-compensation</p> <p>3 costs, in fact, varied with the level of</p> <p>4 services affected by opioids?</p> <p>5 A. Well, this is another version of the</p> <p>6 same question. This is putting things into this</p> <p>7 bucket or that bucket. Some lab supplies, say,</p> <p>8 seemed that they would vary in proportion to the</p> <p>9 number of autopsies performed, so that seemed</p> <p>10 like an easy one to me. Others would have</p> <p>11 required team discussion. Others would have</p> <p>12 benefited by confirmation.</p> <p>13 Q. So again, you've got the three buckets</p> <p>14 of obvious to you, call for team discussion, and</p> <p>15 required confirmation from local officials.</p> <p>16 MR. SOBOL: Objection.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. Right?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 A. Well, I'm really describing a process</p> <p>21 here.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. As part of your process, though, these</p> <p>24 affected non-compensation costs fell into one of</p>	<p>1 then for each affected division the affected</p> <p>2 costs, you then attempted to estimate the</p> <p>3 damages -- what you call damages incurred by</p> <p>4 those affected divisions as a result of</p> <p>5 defendants' misconduct, correct?</p> <p>6 A. That's right.</p> <p>7 Q. And for that you say you rely on the</p> <p>8 analyses and opinions presented in the Cutler</p> <p>9 report?</p> <p>10 A. That's correct.</p> <p>11 Q. So you used the percentages that were</p> <p>12 derived by Professor Cutler, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And is it your understanding that</p> <p>15 Professor Cutler calculated these percentages</p> <p>16 using regression analyses?</p> <p>17 A. Yes, he did.</p> <p>18 Q. Did you replicate Professor Cutler's</p> <p>19 regression analyses?</p> <p>20 A. I didn't conduct my own regression</p> <p>21 analysis, no.</p> <p>22 Q. Did you test Professor Cutler's</p> <p>23 regression analyses?</p> <p>24 A. Well, they -- I tested them in the</p>

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<p style="text-align: right;">Page 142</p> <p>1 sense of seeing whether I thought they were</p> <p>2 reasonable, but I didn't conduct any statistical</p> <p>3 tests on them.</p> <p>4 Q. Did you validate his regression</p> <p>5 analyses in any way?</p> <p>6 MR. SOBOL: Objection.</p> <p>7 A. What -- can you explain what you mean</p> <p>8 by "validate"?</p> <p>9 BY MR. KEYES:</p> <p>10 Q. Yes, confirm that the estimates that</p> <p>11 he arrived at using his regression analyses are</p> <p>12 correct.</p> <p>13 A. Well, I was familiar enough with the</p> <p>14 process to know he was doing it correctly.</p> <p>15 Q. Did you do your own analysis to</p> <p>16 attempt to replicate, test, or validate his</p> <p>17 results?</p> <p>18 MR. SOBOL: Objection. Asked and</p> <p>19 answered.</p> <p>20 A. I didn't replicate his statistics. I</p> <p>21 did tests in the sense of asking myself, do</p> <p>22 these seem reasonable, which they do. And then</p> <p>23 validate, I was aware of his methods and thought</p> <p>24 they were valid methods.</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. Well, if his percentages are too</p> <p>2 high --</p> <p>3 A. Okay.</p> <p>4 Q. -- what impact does that have on your</p> <p>5 calculations?</p> <p>6 A. His percentages attribute -- I'm</p> <p>7 trying to make sure I understand here --</p> <p>8 attribute too high a percentage to defendants'</p> <p>9 misconduct. Then since it's a proportional</p> <p>10 analysis that I do using those numbers, if his</p> <p>11 numbers fall in some proportion, my damages</p> <p>12 numbers would fall in the same proportion.</p> <p>13 Q. Does Professor Cutler rely on the work</p> <p>14 of Professor Rosenthal?</p> <p>15 A. Yes, he does.</p> <p>16 Q. What is your understanding of what</p> <p>17 Professor Rosenthal did?</p> <p>18 A. Professor Rosenthal investigated the</p> <p>19 empirical connection between a certain kind of</p> <p>20 marketing by defendant manufacturers and</p> <p>21 shipments at the national level, shipments of</p> <p>22 prescription opioids.</p> <p>23 Q. Did Professor Cutler, to your</p> <p>24 knowledge, replicate Professor Rosenthal's</p>
<p style="text-align: right;">Page 143</p> <p>1 BY MR. KEYES:</p> <p>2 Q. Do you have the expertise to replicate</p> <p>3 the regression analyses that Professor Cutler</p> <p>4 performed?</p> <p>5 MR. SOBOL: Objection. Asked and</p> <p>6 answered.</p> <p>7 A. Well, the hard part of what Cutler did</p> <p>8 is not writing a one-line Stata code given the</p> <p>9 specification to come up with his estimates, and</p> <p>10 I certainly do have -- I could run one line of</p> <p>11 Stata code. The hard part of what Professor</p> <p>12 Cutler did is finding the right data,</p> <p>13 determining the right specification, in some</p> <p>14 cases interpreting correctly. That -- he's</p> <p>15 better than me for that kind of stuff.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. If Professor Cutler's percentages are</p> <p>18 wrong, that would have a direct negative impact</p> <p>19 on your calculations, correct?</p> <p>20 MR. SOBOL: Objection.</p> <p>21 A. Depends on what direction they're</p> <p>22 wrong, unless I'm misunderstanding what you mean</p> <p>23 by "negative."</p> <p>24 BY MR. KEYES:</p>	<p style="text-align: right;">Page 145</p> <p>1 regression analyses?</p> <p>2 MR. SOBOL: Scope. Objection, scope.</p> <p>3 A. Not to my knowledge.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. Okay. Are you aware of anything that</p> <p>6 Professor Cutler did to test or validate</p> <p>7 Professor Rosenthal's work?</p> <p>8 A. Well, I think his role with respect to</p> <p>9 Professor Rosenthal would have been a little bit</p> <p>10 like my role with respect to him. Did it make</p> <p>11 sense to him?</p> <p>12 And so before I go on, I shouldn't</p> <p>13 answer from his kind of subjective perspective,</p> <p>14 so this -- maybe that's a question for Dave and</p> <p>15 not for Tom.</p> <p>16 Q. If Professor Rosenthal's work has</p> <p>17 flaws, does that have an impact on</p> <p>18 Professor Cutler's work?</p> <p>19 MR. SOBOL: Objection. Scope.</p> <p>20 A. I think it depends on what you're</p> <p>21 talking about in terms of what flaws you might</p> <p>22 mean.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. Well, if Professor Rosenthal's</p>

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<p style="text-align: right;">Page 146</p> <p>1 percentages are wrong, that has an impact on</p> <p>2 Professor Cutler's work, correct?</p> <p>3 A. Well, there's, again, a proportional</p> <p>4 mathematical relationship between shares that</p> <p>5 Professor Rosenthal estimates and shares that</p> <p>6 David then provides to me. So mathematically,</p> <p>7 if Meredith -- Professor Rosenthal's shares are</p> <p>8 too low, for example, and more of the shipments</p> <p>9 are attributable to defendants' misconduct, that</p> <p>10 would raise David's estimated shares of my</p> <p>11 costs.</p> <p>12 Q. And the opposite would be true as</p> <p>13 well?</p> <p>14 A. And the opposite would be true as</p> <p>15 well.</p> <p>16 Q. For your work in your damages report,</p> <p>17 do you rely at all on Professor Gruber's work?</p> <p>18 A. Well, you know, broadly, some of the</p> <p>19 things that Professor Gruber says in his report</p> <p>20 are consistent with the analyses of both</p> <p>21 Professor Cutler and Rosenthal, so my numbers</p> <p>22 come from Rosenthal-Cutler.</p> <p>23 My understanding and the</p> <p>24 reasonableness of my conclusions are confirmed</p>	<p style="text-align: right;">Page 148</p> <p>1 country?</p> <p>2 A. Yes.</p> <p>3 Q. Which Professor Cutler deemed to be of</p> <p>4 roughly the same size at Cuyahoga or Summit</p> <p>5 Counties?</p> <p>6 MR. SOBOL: Objection.</p> <p>7 A. My understanding is not that they were</p> <p>8 the same size, but they were large. They would</p> <p>9 fit into a category of large, which meant a</p> <p>10 minimum size.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. And what was the threshold for being</p> <p>13 large, as you understand it?</p> <p>14 MR. SOBOL: Objection.</p> <p>15 A. I don't remember.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. And did you do any comparison of the</p> <p>18 data specific to Cuyahoga County or Summit</p> <p>19 County versus the data for these several hundred</p> <p>20 large counties that were part of</p> <p>21 Professor Cutler's analysis?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 A. I'm not sure what you're asking.</p> <p>24 BY MR. KEYES:</p>
<p style="text-align: right;">Page 147</p> <p>1 by Professor Gruber's work.</p> <p>2 Q. Do any of the percentages you use come</p> <p>3 from Professor Gruber's work?</p> <p>4 A. No, the percentages don't.</p> <p>5 Q. Do all the percentages that you use in</p> <p>6 your work come from Professor Cutler?</p> <p>7 A. I believe that's correct, yes, for the</p> <p>8 damages.</p> <p>9 Q. Did Professor Cutler's analysis focus</p> <p>10 only on data from Summit County and Cuyahoga</p> <p>11 County?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 A. No, it didn't.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. Okay. Did he perform his calculations</p> <p>16 based on national averages?</p> <p>17 MR. SOBOL: Objection.</p> <p>18 A. I believe most of his empirical</p> <p>19 analysis was a subset of counties which were, I</p> <p>20 think, designated large counties, several</p> <p>21 hundred of these that were about the same size</p> <p>22 as the bellwether county.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. Several hundred counties across the</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Well, I asked you whether -- you use</p> <p>2 Professor Cutler's percentages.</p> <p>3 A. That's correct.</p> <p>4 Q. Professor Cutler's percentages are the</p> <p>5 result of his regression analyses, right?</p> <p>6 A. That's one of the things that fed into</p> <p>7 it, yes.</p> <p>8 Q. The inputs for his regression analyses</p> <p>9 are data for what you describe as several</p> <p>10 hundred large counties around the country,</p> <p>11 correct?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 A. That's my understanding of what he</p> <p>14 used for his regressions.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. And so I'm asking you whether you, in</p> <p>17 connection with your work in this engagement,</p> <p>18 did any comparison of the data for these several</p> <p>19 hundred large counties, as you describe it,</p> <p>20 versus the data specific to Summit County or</p> <p>21 Cuyahoga County.</p> <p>22 A. What would be the example of what</p> <p>23 you're trying to get at?</p> <p>24 Q. I don't want to limit it to anything.</p>

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<p style="text-align: right;">Page 150</p> <p>1 I mean, for any of the data sets that</p> <p>2 Professor Cutler drew on that you say came from</p> <p>3 several hundred large counties around the</p> <p>4 country, did you compare that data set to an</p> <p>5 equivalent data set that was specific to Summit</p> <p>6 County or Cuyahoga County?</p> <p>7 MR. SOBOL: Objection.</p> <p>8 A. Well, my report wasn't sort of</p> <p>9 empirical at that level, so I think I would say</p> <p>10 I didn't do it.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. You prepare your calculations for the</p> <p>13 period 2006 through 2018?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Why that time period?</p> <p>16 A. That was my assignment.</p> <p>17 Q. Your assignment from whom?</p> <p>18 A. From counsel.</p> <p>19 Q. Which counsel?</p> <p>20 A. There's a bunch of them.</p> <p>21 Q. Well, who gave you that specific</p> <p>22 instruction?</p> <p>23 A. It was a team. I don't remember which</p> <p>24 group in particular.</p>	<p style="text-align: right;">Page 152</p> <p>1 BY MR. KEYES:</p> <p>2 Q. In Appendix IV.B, which is the</p> <p>3 Materials Considered, you list a few data sets.</p> <p>4 A. Is there a page you've got me looking</p> <p>5 at here?</p> <p>6 Q. Well, it's IV.B, and it follows your</p> <p>7 CV.</p> <p>8 MR. SOBOL: Page 6 of the Materials</p> <p>9 Considered, is that what you're turning to?</p> <p>10 MR. KEYES: Well, I'm calling his</p> <p>11 attention to IV.B first.</p> <p>12 A. I'm in IV.B.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Then there are several categories, and</p> <p>15 one category are data sources?</p> <p>16 A. Okay.</p> <p>17 Q. Are you there?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. ARCOS data. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. What is ARCOS data?</p> <p>22 A. That's a county level shipments data</p> <p>23 set.</p> <p>24 Q. And who maintains the ARCOS data?</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. Do you remember any of the names?</p> <p>2 A. David Ko, Tom Sobol, Joe Rice, Ann</p> <p>3 Ritter, Derek Loeser.</p> <p>4 Q. Anyone else?</p> <p>5 A. I'm probably forgetting people, but</p> <p>6 that's all I can remember right now.</p> <p>7 Q. And do you have an understanding as to</p> <p>8 the rationale for picking that period, 2006</p> <p>9 through 2018?</p> <p>10 MR. SOBOL: That's a yes or no</p> <p>11 question.</p> <p>12 THE WITNESS: Sorry, I didn't hear the</p> <p>13 objection.</p> <p>14 MR. SOBOL: It's a yes or a no</p> <p>15 question.</p> <p>16 A. No.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. Have you done any analysis as part of</p> <p>19 your engagement to determine whether 2006</p> <p>20 through 2018 is the appropriate time period for</p> <p>21 measuring damages?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 A. No, I didn't do that. I didn't</p> <p>24 undertake that analysis.</p>	<p style="text-align: right;">Page 153</p> <p>1 A. It's a government function. I can't</p> <p>2 remember what level of government.</p> <p>3 Q. Do you remember what government branch</p> <p>4 or agency maintains the ARCOS data?</p> <p>5 A. I can't remember.</p> <p>6 Q. Did you look at the ARCOS data as part</p> <p>7 of your damages engagement here?</p> <p>8 A. Yes.</p> <p>9 Q. What ARCOS data did you look at?</p> <p>10 A. These would have been shipment</p> <p>11 summaries.</p> <p>12 Q. Okay. And how did you receive those</p> <p>13 shipment summaries?</p> <p>14 A. They would have been in tables and</p> <p>15 figures.</p> <p>16 Q. Provided by whom?</p> <p>17 A. Provided by staff at Compass Lex, or</p> <p>18 perhaps Greylock McKinnon.</p> <p>19 Q. Did you request the ARCOS data?</p> <p>20 A. It had been requested, so wherever the</p> <p>21 original request came, it wasn't from me.</p> <p>22 Q. What do you mean "it had been</p> <p>23 requested"?</p> <p>24 A. Some member of the economic team</p>

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<p>1 requested the data. I'm not sure who.</p> <p>2 Q. When you refer to the economic team,</p> <p>3 who are you referring to?</p> <p>4 A. The other economic experts in this</p> <p>5 case.</p> <p>6 Q. Referring to Professor Rosenthal,</p> <p>7 Professor Cutler, Professor Gruber?</p> <p>8 A. Yes.</p> <p>9 Q. Did you request the ARCOS data?</p> <p>10 A. I didn't request it personally.</p> <p>11 Q. Okay. And did you sign a protective</p> <p>12 order regarding access to and use of ARCOS data?</p> <p>13 A. I signed a protective order. I don't</p> <p>14 remember signing one with respect to this data</p> <p>15 alone.</p> <p>16 Q. You don't remember signing a</p> <p>17 protective order specific to ARCOS data?</p> <p>18 A. I don't remember.</p> <p>19 Q. And was the ARCOS data relevant to</p> <p>20 your quantification of damages?</p> <p>21 A. Yes.</p> <p>22 Q. How so?</p> <p>23 A. Well, this was the main subject of</p> <p>24 Professor Cutler's analysis, and it was very</p>	<p>1 economic team?</p> <p>2 A. That would have been requested by</p> <p>3 someone else on the economic team.</p> <p>4 Q. Did you review the BLS data?</p> <p>5 A. By "review," do you mean look at the</p> <p>6 data?</p> <p>7 Q. Did you look at it?</p> <p>8 A. I looked at some tables from the BLS</p> <p>9 data.</p> <p>10 Q. And did you use the BLS data in your</p> <p>11 work on the damages engagement, separate and</p> <p>12 apart from relying on Professor Cutler's</p> <p>13 percentages?</p> <p>14 A. I think I understand the question.</p> <p>15 This was used by David Cutler who</p> <p>16 contributed percentages to me, but I didn't do</p> <p>17 any independent analysis of the BLS data.</p> <p>18 Q. Okay. There are a number of other</p> <p>19 data sources listed here, and we can go through</p> <p>20 them one by one, but is the same true for each</p> <p>21 of these other data sources --</p> <p>22 MR. SOBOL: Objection.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. -- that it was requested by someone on</p>
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<p>1 relevant, how the data turned out and the</p> <p>2 results turn out for my damages calculation.</p> <p>3 Q. Did you use the ARCOS data in your own</p> <p>4 calculations?</p> <p>5 A. I used them in the sense of the</p> <p>6 results that Professor Cutler obtained from</p> <p>7 using the ARCOS data.</p> <p>8 Q. Okay. So you're saying the ARCOS data</p> <p>9 may have been relevant to Professor Cutler's</p> <p>10 work and the calculations he arrived at,</p> <p>11 correct?</p> <p>12 A. That's -- yes, that's correct.</p> <p>13 Q. Separate from Professor Cutler's</p> <p>14 calculations, was the ARCOS data relevant to</p> <p>15 the -- did you use the ARCOS data in your work</p> <p>16 in this engagement?</p> <p>17 A. I don't think I used it in any way</p> <p>18 independent of Professor Cutler's analysis.</p> <p>19 Q. You also referenced BLS data?</p> <p>20 A. Yes.</p> <p>21 Q. What's BLS?</p> <p>22 A. That's Bureau of Labor Statistics.</p> <p>23 Q. Did you request the BLS data, or was</p> <p>24 that something requested by someone else on the</p>	<p>1 the economic team, not by you, that it may have</p> <p>2 been used by Professor Cutler, but separate from</p> <p>3 what Professor Cutler did to arrive at</p> <p>4 percentages that you used, you otherwise did not</p> <p>5 use the data in your work to quantify damages?</p> <p>6 MR. SOBOL: Objection.</p> <p>7 A. I'm looking. I'd have to go back and</p> <p>8 confirm where the crime -- how the crime data</p> <p>9 plays in here.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. The FBI crime data?</p> <p>12 A. The FBI crime data.</p> <p>13 Q. Sitting here today, do you know how</p> <p>14 the FBI crime data is relevant to the work you</p> <p>15 did separate and apart from relying on</p> <p>16 Professor Cutler's percentages?</p> <p>17 A. I don't want to say the wrong thing.</p> <p>18 I would have to go back and check and see how</p> <p>19 the crime accounting was done to be sure.</p> <p>20 Q. Okay. So you don't know as to the FBI</p> <p>21 crime data.</p> <p>22 How about the other categories?</p> <p>23 MR. SOBOL: Objection.</p> <p>24 BY MR. KEYES:</p>

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<p>1 Q. Did you actually use the data in any</p> <p>2 of these other categories that are listed</p> <p>3 separate and apart from whether they were used</p> <p>4 by Professor Cutler to arrive at the statistics</p> <p>5 and the percentages that you used?</p> <p>6 A. I would have to go back and check and</p> <p>7 see about the census data, and even the multiple</p> <p>8 causes of death data. This would require a</p> <p>9 little bit of homework or time --</p> <p>10 Q. Okay.</p> <p>11 A. -- going back here today.</p> <p>12 Q. Well, looking at this list of data</p> <p>13 sources, can you identify for me any of the data</p> <p>14 that you used in your work separate and apart</p> <p>15 from whether Professor Cutler used it to arrive</p> <p>16 at percentages that you then used?</p> <p>17 A. I understand the question.</p> <p>18 And for a couple of these, I have to</p> <p>19 go back and check to be sure.</p> <p>20 Q. Okay. And you've identified those.</p> <p>21 A. Yes.</p> <p>22 Q. What about the other ones?</p> <p>23 A. I don't think so.</p> <p>24 Q. You don't think you used them?</p>	<p>1 Q. Did you read all of them?</p> <p>2 A. Well, I read some of all of them. I</p> <p>3 didn't read all of all of them.</p> <p>4 Q. Okay. So you read -- did you read any</p> <p>5 of these deposition transcripts in its entirety?</p> <p>6 MR. SOBOL: Objection. Asked and</p> <p>7 answered.</p> <p>8 A. I -- well, some of them I may have</p> <p>9 more like flipped through and seen all the</p> <p>10 pages, but I don't claim to have read any of</p> <p>11 them word for word.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. When you skimmed through them, how did</p> <p>14 you determine what portions to read or skim or</p> <p>15 not read or skim at all?</p> <p>16 A. This is another one of those processes</p> <p>17 in which in this case the enterprise was I was</p> <p>18 interested in certain, in this case, evidence</p> <p>19 from deposition of local officials, and the</p> <p>20 primary thing I remember is I'm interested in</p> <p>21 evidence that the opioid crisis has affected the</p> <p>22 spending in these divisions in some way that may</p> <p>23 have moved funds over in one direction from</p> <p>24 another. And what I would have done is say, and</p>
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<p>1 A. I don't think I used them, except for</p> <p>2 having been used by other -- one of the other</p> <p>3 economists.</p> <p>4 Q. Did you sign any data use agreement</p> <p>5 with the National Center for Health Statistics?</p> <p>6 A. I don't think so, no.</p> <p>7 Q. Okay. Did you sign any data use</p> <p>8 agreement with the Pacific Institute for</p> <p>9 Research and Evaluation?</p> <p>10 A. I don't think so.</p> <p>11 Q. Did you sign any data use agreement</p> <p>12 with any other organization in connection with</p> <p>13 your work on this engagement?</p> <p>14 A. I can't think of any.</p> <p>15 Q. You list on the prior page, Page 5 of</p> <p>16 Appendix IV.B, Deposition Transcripts.</p> <p>17 Do you see those?</p> <p>18 A. Yes.</p> <p>19 Q. Are those the only deposition</p> <p>20 transcripts you considered?</p> <p>21 A. I can't think of any others.</p> <p>22 Q. Okay. And for -- you list six</p> <p>23 deposition transcripts here, correct?</p> <p>24 A. That's right.</p>	<p>1 asked my staff, here are depositions of people</p> <p>2 who might know about that, would you please go</p> <p>3 through these depositions and see if there's</p> <p>4 some indication that there's evidence for that.</p> <p>5 Q. So did your staff give you summaries</p> <p>6 or --</p> <p>7 MR. SOBOL: He hasn't finished.</p> <p>8 A. The process isn't quite over.</p> <p>9 So they would have flagged certain</p> <p>10 parts of the deposition, and then I would go</p> <p>11 back and confirm that that was actually what was</p> <p>12 being said, my interpretation of what was being</p> <p>13 said, and then I'd read around that to make sure</p> <p>14 there wasn't some context I was missing, and</p> <p>15 then I maybe took a quick look at the rest of</p> <p>16 the deposition.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. Did anyone on your so-called team</p> <p>19 prepare any summaries of the deposition</p> <p>20 testimony?</p> <p>21 A. Not so far as I know.</p> <p>22 Q. Did you intend to read all of the</p> <p>23 deposition transcripts in the case?</p> <p>24 MR. SOBOL: Objection.</p>

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<p>1 A. I never intended to read all the</p> <p>2 depositions, no.</p> <p>3 BY MR. KEYES:</p> <p>4 Q. Did you intend to read all the</p> <p>5 deposition testimony in the case about whether</p> <p>6 there was evidence that the opioid crisis</p> <p>7 affected the spending of particular divisions?</p> <p>8 A. I think "all" would be an</p> <p>9 overstatement. I was looking for sufficient</p> <p>10 evidence to back up my report, and at this point</p> <p>11 I thought that was sufficient.</p> <p>12 Q. So who identified these six deposition</p> <p>13 transcripts as being transcripts, at least</p> <p>14 portions of which you should read for your work</p> <p>15 in this case?</p> <p>16 A. This would have been me saying, I'm</p> <p>17 interested in testimony of local officials,</p> <p>18 either in budget documents or something else, or</p> <p>19 in deposition, that indicates money has been</p> <p>20 moved as a result of opioid crisis. So it would</p> <p>21 have been that level of that's what I would like</p> <p>22 to see. And then staff made a determination of</p> <p>23 who among the deponents maybe has something to</p> <p>24 say about that, and then they would read those</p>	<p>1 officials that this diversion is taking place.</p> <p>2 Q. Who does Donna Skoda work for?</p> <p>3 A. Donna Skoda.</p> <p>4 Q. Does she work for Summit County?</p> <p>5 A. I would have a 50/50 chance of getting</p> <p>6 this right. I'm sorry if I don't remember.</p> <p>7 Q. Does she work for Cuyahoga County?</p> <p>8 A. Same chance.</p> <p>9 Q. Does she work for someone besides</p> <p>10 Summit County or Cuyahoga County?</p> <p>11 A. I don't remember who she worked for.</p> <p>12 Q. Do you remember what her title is?</p> <p>13 A. I think she's a budget person, but</p> <p>14 I'm, again, just trying to recollect as best I</p> <p>15 can.</p> <p>16 Q. Do you remember what division she</p> <p>17 works for?</p> <p>18 A. I don't remember.</p> <p>19 Q. Gary Gingell, who does he work for?</p> <p>20 A. I don't remember.</p> <p>21 Q. Summit County?</p> <p>22 A. I don't remember.</p> <p>23 Q. Cuyahoga County?</p> <p>24 A. I don't remember.</p>
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<p>1 depositions.</p> <p>2 Q. And when you said "I'm interested in</p> <p>3 the testimony of local officials either in</p> <p>4 budget documents or something else, or in</p> <p>5 deposition, that indicates money has been moved</p> <p>6 as a result of the opioid crisis," to whom did</p> <p>7 you say that?</p> <p>8 A. That would have been a team-type</p> <p>9 statement.</p> <p>10 Q. The economic team?</p> <p>11 A. No, it wasn't to --</p> <p>12 Q. Compass Lexecon team?</p> <p>13 A. This would have been to Compass</p> <p>14 Lexecon.</p> <p>15 Q. And what steps did you take to make</p> <p>16 sure that they got their hands on all the</p> <p>17 deposition testimony that met your parameters?</p> <p>18 A. As I explained, I didn't feel it</p> <p>19 necessary to be exhaustive with respect to the</p> <p>20 deposition of officials who may have said</p> <p>21 something about this. I gave them that general</p> <p>22 direction. This came back a pretty substantial</p> <p>23 list that included backup for me that I felt</p> <p>24 like, okay, check, I have evidence from local</p>	<p>1 Q. Someone other than Summit County or</p> <p>2 Cuyahoga County?</p> <p>3 A. I don't remember.</p> <p>4 Q. Do you know his title?</p> <p>5 A. I am afraid I don't.</p> <p>6 Q. Do you know what division he worked</p> <p>7 for?</p> <p>8 MR. SOBOL: Objection.</p> <p>9 A. I'm afraid I don't.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. Is the same true for Greta Johnson?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 What's the question?</p> <p>14 BY MR. KEYES:</p> <p>15 Q. That you don't know who she works for?</p> <p>16 MR. SOBOL: Go ahead.</p> <p>17 A. I don't remember Greta Johnson, or</p> <p>18 where she would have worked.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. Do you know what her title was?</p> <p>21 MR. SOBOL: Objection. Asked and</p> <p>22 answered.</p> <p>23 A. I don't remember what her title is.</p> <p>24 BY MR. KEYES:</p>

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<p>1 Q. Or what division she worked for?</p> <p>2 MR. SOBOL: Objection. Asked and</p> <p>3 answered.</p> <p>4 A. I don't remember that.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. Okay. How about Jackie Pollard, who</p> <p>7 did she work for?</p> <p>8 A. I don't remember.</p> <p>9 Q. What was her title?</p> <p>10 MR. SOBOL: Objection. Asked and</p> <p>11 answered.</p> <p>12 A. I don't -- I don't -- sorry, I don't</p> <p>13 remember.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. What division did she work for?</p> <p>16 MR. SOBOL: Objection. Asked and</p> <p>17 answered.</p> <p>18 A. I don't remember.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. Margaret Keenan, who did she work for?</p> <p>21 A. I don't remember.</p> <p>22 Q. What was her title?</p> <p>23 MR. SOBOL: Objection. Asked and</p> <p>24 answered.</p>	<p>1 answered.</p> <p>2 A. Well, not necessarily.</p> <p>3 BY MR. KEYES:</p> <p>4 Q. Why not?</p> <p>5 A. I think in --</p> <p>6 MR. SOBOL: Well, objection. Asked</p> <p>7 and answered.</p> <p>8 A. In many situations, one needs</p> <p>9 sufficient information to make a determination.</p> <p>10 It doesn't mean you need all possible</p> <p>11 information to make a determination. And in my</p> <p>12 judgment, looking through these six depositions</p> <p>13 gave me sufficient confidence that the approach</p> <p>14 saying that funds were diverted from other uses</p> <p>15 to the opioid crisis was a valid and reliable</p> <p>16 method.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. Which of these six people, if any,</p> <p>19 worked for the Office of Medical Examiner?</p> <p>20 A. I don't remember.</p> <p>21 Q. Okay. If none of them worked for the</p> <p>22 Office of Medical Examiner, but others who did</p> <p>23 work for the Office of Medical Examiner were</p> <p>24 deposited about this very topic, would you want to</p>
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<p>1 A. I don't remember.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. What division did she work for?</p> <p>4 MR. SOBOL: Objection. Asked and</p> <p>5 answered.</p> <p>6 A. I don't remember.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. Molly Leckler, who did she work for?</p> <p>9 A. I think she's a substance abuse</p> <p>10 person.</p> <p>11 Q. For?</p> <p>12 A. She was talking about drug courts, if</p> <p>13 I remember her deposition testimony.</p> <p>14 Q. Did she work for Summit County or</p> <p>15 Cuyahoga County, or other?</p> <p>16 A. I don't remember which county she</p> <p>17 would have worked for, sorry.</p> <p>18 Q. Do you remember her title?</p> <p>19 A. I don't remember her title.</p> <p>20 Q. If other people not listed here had</p> <p>21 testified about whether the opioid crisis</p> <p>22 affected their division's spending, is that</p> <p>23 something you would have wanted to see?</p> <p>24 MR. SOBOL: Objection. Asked and</p>	<p>1 see their testimony?</p> <p>2 A. Well, it's the same question I just</p> <p>3 answered. This set of deponents gave me</p> <p>4 sufficient confidence that I was approaching it</p> <p>5 in the right way.</p> <p>6 Q. What if personnel from the Office of</p> <p>7 Medical Examiner said they couldn't identify any</p> <p>8 variable costs, would that be relevant to your</p> <p>9 work?</p> <p>10 A. Oftentimes real world people use terms</p> <p>11 differently than economists use them, so it</p> <p>12 depends, I would say.</p> <p>13 Q. What if people who worked for the</p> <p>14 Office of Medical Examiner testified "I can't</p> <p>15 think of a single expense we had that changed</p> <p>16 because of the opioid crisis," would that be</p> <p>17 relevant to your work --</p> <p>18 MR. SOBOL: Objection.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. -- to know that they said that?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 A. It might be relevant. I would have</p> <p>23 to -- I wouldn't necessarily conclude that</p> <p>24 there's no variable costs.</p>

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<p>1 BY MR. KEYES:</p> <p>2 Q. Because you think you might be right</p> <p>3 and they might be wrong?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 A. I'm approaching the question in a</p> <p>6 particular way, and I would have to really know</p> <p>7 the context of how the person -- what the person</p> <p>8 was asked, how they might see the world, and</p> <p>9 then try to understand their answer.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. When you gave directions to the</p> <p>12 Compass Lexecon team to go get confirmation</p> <p>13 either which divisions you thought were affected</p> <p>14 or which costs you thought were affected, did</p> <p>15 you tell them to only go talk to people who had</p> <p>16 been deposed in the case?</p> <p>17 A. No. This was a very general interest</p> <p>18 of mine that I articulated early, and it was</p> <p>19 something I was on the lookout for.</p> <p>20 Q. Did Compass Lexecon team talk to</p> <p>21 people who were not deposed in the case?</p> <p>22 MR. SOBOL: Objection. Asked and</p> <p>23 answered.</p> <p>24 A. They would have talked to some of the</p>	<p>1 through 28 is based on what you've read,</p> <p>2 correct?</p> <p>3 A. Well, so far there are references to</p> <p>4 things I would have read. It looks like</p> <p>5 their -- all the backup here is to written</p> <p>6 material, yes.</p> <p>7 Q. Okay.</p> <p>8 A. Excuse me. Pardon me. There's a</p> <p>9 deposition of Molly Leckler here. See if I got</p> <p>10 it right with respect -- yes, drug court, Molly</p> <p>11 Leckler.</p> <p>12 Q. So the discussion on Pages 23</p> <p>13 through 28 is based on what you've read?</p> <p>14 A. Including the deposition testimony,</p> <p>15 yes.</p> <p>16 Q. Okay. Is it accurate to say that this</p> <p>17 discussion on these pages is not based on any</p> <p>18 firsthand experience of yours?</p> <p>19 A. "Firsthand experience," what do you</p> <p>20 mean by that?</p> <p>21 Q. I mean, you are describing what you</p> <p>22 read, not what you experienced yourself, you</p> <p>23 didn't see it yourself, you didn't live it</p> <p>24 yourself.</p>
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<p>1 local officials we talked about earlier.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. You only identified by broad category,</p> <p>4 you don't remember the names. So I'm trying to</p> <p>5 figure out, even if you don't remember their</p> <p>6 names, do you know whether Compass Lexecon</p> <p>7 talked to people who worked for Summit County or</p> <p>8 Cuyahoga County who were not deposed in this</p> <p>9 case?</p> <p>10 A. I am not sure. Those are two</p> <p>11 different lists. Whether their list was</p> <p>12 deposed, I really can't tell you one way or the</p> <p>13 other.</p> <p>14 Q. There's a discussion in your report</p> <p>15 starting on Page 23. It's the section titled</p> <p>16 "Municipal Governments Have Been Impacted by the</p> <p>17 Opioid Epidemic: Examples from Bellwether</p> <p>18 Governments."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Starts on 23 and goes through 28.</p> <p>22 Do you see that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And so this discussion on Pages 23</p>	<p>1 A. You mean, do I have any firsthand</p> <p>2 experience with drug abuse? Is that what you're</p> <p>3 asking?</p> <p>4 Q. No. I'm asking you, the stuff that</p> <p>5 you've included in here is stuff you've read.</p> <p>6 A. We already established that.</p> <p>7 Q. It's not based on what you</p> <p>8 experienced, it's not based on something you</p> <p>9 studied yourself, these are not studies that you</p> <p>10 conducted, correct?</p> <p>11 MR. SOBOL: Objection.</p> <p>12 I think you just asked about four</p> <p>13 questions in a row, so I think you should</p> <p>14 reframe the question so we make sure it's clear</p> <p>15 what question he's answering.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. Let's take them one step at a time.</p> <p>18 The material on Pages 23 through 28,</p> <p>19 this is not describing any studies you've</p> <p>20 conducted, correct?</p> <p>21 A. These are studies that I and my team</p> <p>22 identified that would make the point that</p> <p>23 municipal governments have been affected.</p> <p>24 Q. So it is not material that you have</p>

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<p style="text-align: right;">Page 174</p> <p>1 studied yourself? These are not studies you</p> <p>2 conducted yourself?</p> <p>3 A. It says what they are. Counsel of</p> <p>4 Economic Advisors, I did not do that study. As</p> <p>5 part of my professional work, I study the</p> <p>6 studies.</p> <p>7 Q. You didn't conduct any of the studies</p> <p>8 that are referenced on these pages, correct?</p> <p>9 A. I didn't conduct any studies here.</p> <p>10 Q. And you didn't personally calculate</p> <p>11 any of the statistics that are reported on these</p> <p>12 pages, correct?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 A. Oh, gosh, did I? I think these are --</p> <p>15 it's a review of relevant studies. I didn't</p> <p>16 conduct any new empirical analysis of any of the</p> <p>17 things that are reported here in this section.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. Did you test or validate any of the</p> <p>20 numbers or statistics that are in this section?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 A. At some place in my report or in this</p> <p>23 section you're talking about?</p> <p>24 BY MR. KEYES:</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. I want to make sure the record is</p> <p>2 clear. Your answer is no?</p> <p>3 MR. SOBOL: Objection.</p> <p>4 To what?</p> <p>5 A. Well, let me state what I think is the</p> <p>6 issue here.</p> <p>7 Of the studies that are mentioned in</p> <p>8 this section of my report, I did not in this</p> <p>9 section of this report conduct any validation of</p> <p>10 those studies.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. Nor did you conduct any validation of</p> <p>13 those studies elsewhere in your damages report,</p> <p>14 correct?</p> <p>15 A. I think that's correct, although I did</p> <p>16 get around to it in another context.</p> <p>17 Q. There are some references in your</p> <p>18 report and in the appendices to a crime-focused</p> <p>19 adjustment.</p> <p>20 Do you recall the crime-focused</p> <p>21 adjustment?</p> <p>22 A. Yes, I do.</p> <p>23 Q. What is the crime-focused adjustment?</p> <p>24 A. Well, this was an approach to</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. I'm talking about the discussion on</p> <p>2 Pages 23 through 28.</p> <p>3 A. As a self-contained unit, it doesn't</p> <p>4 count. Validation might have done elsewhere in</p> <p>5 the report.</p> <p>6 Q. Did you test or validate any of the</p> <p>7 numbers or statistics in this section?</p> <p>8 A. The question is still ambiguous, but</p> <p>9 I'll try to answer it.</p> <p>10 I didn't do any validation within this</p> <p>11 section of the material noted in this section.</p> <p>12 Q. Do you think you validated it</p> <p>13 elsewhere in your report?</p> <p>14 A. I do.</p> <p>15 Q. Where do you think you validated it</p> <p>16 elsewhere?</p> <p>17 A. This would be in my public nuisance</p> <p>18 report.</p> <p>19 Q. So you're switching reports.</p> <p>20 I'm talking about this report, damages</p> <p>21 report. Did you validate it anywhere in this</p> <p>22 report?</p> <p>23 MR. SOBOL: Asked and answered.</p> <p>24 BY MR. KEYES:</p>	<p style="text-align: right;">Page 177</p> <p>1 recognizing that police do things other than</p> <p>2 deal with criminals. They direct traffic, for</p> <p>3 example, and I wanted to make a cut at not</p> <p>4 attributing to opioids variable costs associated</p> <p>5 with police that might be not likely to be</p> <p>6 affected by opioids.</p> <p>7 Q. So do you know which, sitting here</p> <p>8 right now, which divisions you used a</p> <p>9 crime-focused adjustment on?</p> <p>10 A. I think it primarily would have been</p> <p>11 the law enforcement. I have to go back and</p> <p>12 check to see if it applied to anything else.</p> <p>13 Q. Okay. I believe you used it for the</p> <p>14 office of prosecutor. Why?</p> <p>15 A. Well, for the same reason. There are</p> <p>16 different types of crimes, and some may not be</p> <p>17 affected by opioids.</p> <p>18 Q. And how did you determine what</p> <p>19 percentage to use for your crime-focused</p> <p>20 adjustment for the Office of Prosecutor? Not</p> <p>21 necessarily the numbers, but what was your</p> <p>22 method?</p> <p>23 A. This would have been looking at the</p> <p>24 underlying documents. Probably it would have</p>

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<p>1 required a discussion with the team on this one</p> <p>2 to make a determination of what goes where.</p> <p>3 Q. Was that also a subject of follow-up</p> <p>4 by the Compass Lexecon team with any officials</p> <p>5 who worked for Summit County or Cuyahoga County?</p> <p>6 A. I'm not sure about that.</p> <p>7 Q. I believe you also used a</p> <p>8 crime-focused adjustment for the Court of Common</p> <p>9 Pleas.</p> <p>10 Does that sound right to you?</p> <p>11 A. That seems right to me.</p> <p>12 Q. Why did you use a crime-focused</p> <p>13 adjustment for the Court of Common Pleas?</p> <p>14 A. Because I think that division handles</p> <p>15 things that wouldn't be affected by the opioid</p> <p>16 crisis.</p> <p>17 Q. Such as?</p> <p>18 A. I didn't want to count them.</p> <p>19 I'm not sure what the category would</p> <p>20 be.</p> <p>21 Q. Did you take the same approach in</p> <p>22 trying to arrive at a crime-focused adjustment</p> <p>23 for the Court of Common Pleas as you did for</p> <p>24 Office of Prosecutor, which is you used your</p>	<p>1 of funding opioid-specific activities, to arrive</p> <p>2 at cost to the Bellwether governments net of</p> <p>3 outside contributions."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Which counsel gave you that</p> <p>7 instruction?</p> <p>8 A. I don't remember.</p> <p>9 Q. What is your understanding of the</p> <p>10 rationale for that instruction?</p> <p>11 MR. SOBOL: Objection.</p> <p>12 Can you explain why you think that</p> <p>13 gets -- does not violate the limitation on</p> <p>14 discussions between the experts and counsel?</p> <p>15 MR. KEYES: Yes, because he</p> <p>16 specifically discussed it in Paragraph 35 of his</p> <p>17 report to explain what he's doing, and I want to</p> <p>18 understand why he's doing that.</p> <p>19 MR. SOBOL: I instruct him not to</p> <p>20 answer that, if that's your reason.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. Okay. So just so the record is clear,</p> <p>23 what is your understanding of the rationale for</p> <p>24 deducting as an offset any revenue received from</p>
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<p>1 best judgment based on your review of the cost</p> <p>2 categories? Then there was a team discussion,</p> <p>3 and in some instances there was follow-up with</p> <p>4 local officials?</p> <p>5 A. Yeah, the general --</p> <p>6 MR. SOBOL: Objection to the form of</p> <p>7 the question.</p> <p>8 A. The general methodology would have</p> <p>9 been the same.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. I believe you also used a</p> <p>12 crime-focused adjustment for the sheriff's</p> <p>13 office. Does that seem right to you?</p> <p>14 A. It does seem right.</p> <p>15 Q. Why?</p> <p>16 A. For the same reason.</p> <p>17 Q. And did you follow the same</p> <p>18 methodology?</p> <p>19 A. The same general process, yes.</p> <p>20 Q. You say on Page 20 of your report at</p> <p>21 Paragraph 35, "On instruction from counsel, I</p> <p>22 deduct as an offset any revenue received from</p> <p>23 other governments, or any other external</p> <p>24 sources, that was provided for the sole purpose</p>	<p>1 other governments or any other external sources</p> <p>2 that was provided for the sole purpose of</p> <p>3 funding opioid-specific activities?</p> <p>4 MR. SOBOL: I instruct him not to</p> <p>5 answer.</p> <p>6 You might ask the threshold question</p> <p>7 whether or not, yes or no, he has an</p> <p>8 understanding about it, because that might avoid</p> <p>9 any needless battle over this issue.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. Well, did you follow the instruction?</p> <p>12 MR. SOBOL: If he doesn't have a</p> <p>13 memory --</p> <p>14 BY MR. KEYES:</p> <p>15 Q. Did you follow the instruction?</p> <p>16 MR. SOBOL: That's a different</p> <p>17 question. He can answer that question.</p> <p>18 A. As best I could, yes.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. And did the instruction make sense to</p> <p>21 you?</p> <p>22 A. It made sense to me as an economist.</p> <p>23 Q. And as an economist, did the</p> <p>24 instruction have a reasonable rationale?</p>

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<p style="text-align: right;">Page 182</p> <p>1 A. Well, I can only speak from an 2 economics perspective, and it has a reasonable 3 rationale from the standpoint of economics. 4 Q. What is that rationale? 5 A. Under the view that damages consist of 6 costs incurred by the local governments, the 7 local governments, the government of Cuyahoga, 8 the government of Summit County as a result of 9 the opioid crisis, the degree to which those 10 costs are shared with another entity, for 11 example, the state government or a federal 12 government, then they do not count against the 13 damages to the local jurisdictions. 14 Now, as an economic statement, I 15 understand from counsel that there's some legal 16 issues that I don't appreciate, but that's my 17 economic understanding. 18 Q. So in this engagement, did you 19 endeavor to exclude all expenditures that were 20 funded by revenue from other sources, that is 21 besides the two counties where the funding was 22 dedicated to funding opioid-specific activities? 23 MR. SOBOL: Objection. 24 A. Well, this is more subtle than your</p>	<p style="text-align: right;">Page 184</p> <p>1 mental health services, but this is the amount 2 you have. And then in that case, there would be 3 no deduction because they would get that same 4 intergovernmental transfer, however much they 5 spent on opioids or not. 6 So that's -- I know that was long, 7 but -- 8 BY MR. KEYES: 9 Q. So is the difference -- is the 10 difference between -- 11 MR. SOBOL: He hasn't finished. 12 A. I just have one more sentence. 13 That's the kind of question that needs 14 to be applied to various categories of 15 governmental aid. 16 BY MR. KEYES: 17 Q. So is the difference between your two 18 hypotheticals whether the locality could take 19 those dollars and spend it on something besides 20 opioids? 21 A. Well, that's a kind of quick summary 22 of what the issue is, would they have the money 23 available to do something else if they didn't 24 spend it on opioids.</p>
<p style="text-align: right;">Page 183</p> <p>1 question may imply. 2 The relevant economic question is, if 3 the division would not have spent, say, \$100 on 4 opioid-related activities, then how much would 5 its budgets for other things have to fall? And 6 depending on the form of the -- what are called 7 in public finance intergovernmental transfers, 8 that question could be answered in different 9 ways. 10 A simple case would be, suppose the 11 federal government pays for 50 percent of 12 community policing devoted to opioids, so if you 13 can identify a budget category, we're going to 14 send police out to do drug work that is directed 15 to opioids, and the feds say we'll pay 16 50 percent of that, then any costs of that are 17 shared between the two entities, and 50 percent 18 of those costs only would have been counted 19 against the damages to the local government. 20 Another example would be, say, a block 21 grant, which is the other kind of spectrum here 22 in which the local government receives an amount 23 that is determined by a formula and said broadly 24 you have to spend this on alcohol-drug abuse and</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. So you endeavor to exclude money that 2 Summit County or Cuyahoga County received that 3 it could only spend on the opioid problem, 4 because if the opioid problem didn't exist they 5 wouldn't have gotten the money, and they 6 couldn't have spent the money on something else. 7 Is that fair? 8 MR. SOBOL: Objection. 9 You may answer. 10 A. Well, it's not the way an economist 11 would put the -- not the way an economist would 12 characterize it. The way I would characterize 13 it is if there's either a total or a share of 14 spending that a local government incurs to 15 defeat opioids, if some of that is offset 16 against intergovernmental transfers, it only 17 would be received if those expenditures are 18 incurred, then that's treated as an offset to 19 the local expenditures because that frees up 20 some of the local money to be spent elsewhere. 21 BY MR. KEYES: 22 Q. Can you turn to Tables IV.13 and 23 IV.12? It's the very end of your report. 24 A. Okay.</p>

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<p>1 Q. So Table IV.12 is the damages for</p> <p>2 Cuyahoga County, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And Table IV.13 is damages for Summit</p> <p>5 County?</p> <p>6 A. That's correct.</p> <p>7 Q. And Table IV.14 is the summation of</p> <p>8 the two?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. And these are damages</p> <p>11 attributable to the defendants' misconduct,</p> <p>12 correct?</p> <p>13 A. That's my understanding, yes.</p> <p>14 Q. Okay. And you said earlier in your</p> <p>15 report that the analysis presented here does not</p> <p>16 attempt to distinguish damages attributable to</p> <p>17 manufacturers from those attributable to</p> <p>18 distributors or other CSA registrants."</p> <p>19 Is that correct?</p> <p>20 A. I remember saying that, yes.</p> <p>21 Q. Okay. And when you use the phrase</p> <p>22 "other CSA registrants," what is the CSA you're</p> <p>23 referring to?</p> <p>24 A. I think it's Controlled Substance Act.</p>	<p>1 end of your report, Tables IV.12, 13, and in the</p> <p>2 summary 14, these are calculations of what you</p> <p>3 call damages attributable to defendants'</p> <p>4 misconduct, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And when you refer to defendants'</p> <p>7 misconduct, you refer to misleading marketing,</p> <p>8 correct?</p> <p>9 A. I believe I'm a bit more general than</p> <p>10 that, at least in some places.</p> <p>11 Q. Okay. Well, let's go back to Pages 11</p> <p>12 and 12. Do you see that it says, "the damage</p> <p>13 methodology depends on the share of prescription</p> <p>14 opioid shipments attributable to misleading</p> <p>15 marketing," the very beginning of Paragraph 19.</p> <p>16 A. Okay. There's the rest of the</p> <p>17 sentence there.</p> <p>18 Q. Right.</p> <p>19 But you do reference misleading</p> <p>20 marketing. So what damages -- have you</p> <p>21 calculated which damages are attributable to</p> <p>22 misleading marketing --</p> <p>23 MR. SOBOL: Objection.</p> <p>24 BY MR. KEYES:</p>
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<p>1 Q. And who are the other CSA registrants?</p> <p>2 A. Do you mind if I just go there and</p> <p>3 take a look?</p> <p>4 Q. Sure. Page 12, Paragraph 19.</p> <p>5 A. I believe some pharmacies are also CSA</p> <p>6 registrants.</p> <p>7 Q. Are you including pharmacies in the</p> <p>8 "other CSA registrants" here?</p> <p>9 A. I'm including whatever other CSA</p> <p>10 registrants there are.</p> <p>11 Q. Okay. And you've identified</p> <p>12 pharmacies. Can you identify any other category</p> <p>13 of people who are CSA registrants besides</p> <p>14 manufacturers and distributors?</p> <p>15 MR. SOBOL: And pharmacies.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. And pharmacies.</p> <p>18 A. No, that's all I can do.</p> <p>19 Q. Are doctors CSA registrants?</p> <p>20 A. I don't know.</p> <p>21 Q. Have you looked into that in</p> <p>22 connection with your work in this case?</p> <p>23 A. No, I haven't.</p> <p>24 Q. Okay. Going back to the tables at the</p>	<p>1 Q. -- and not something else?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 A. What I have calculated is an</p> <p>4 estimated -- an estimate of the total damages</p> <p>5 without attempting to attribute them to any of</p> <p>6 the particular defendants.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. Okay. So for the damages you've</p> <p>9 calculated, have you determined which portion of</p> <p>10 those damages were caused by misleading</p> <p>11 marketing as opposed to something else?</p> <p>12 A. Well, the way I would answer that is</p> <p>13 following the methodology of the framework of</p> <p>14 Rosenthal, Cutler, and me.</p> <p>15 Professor Rosenthal estimates that</p> <p>16 there are shipments due to defendants'</p> <p>17 misleading advertising, so that's what her</p> <p>18 empirical estimate is --</p> <p>19 Q. And only that, correct?</p> <p>20 MR. SOBOL: Were you finished with</p> <p>21 your answer?</p> <p>22 A. No, but I'll try to be brief.</p> <p>23 That's what Professor Rosenthal does.</p> <p>24 And then that's applied by Professor Cutler to</p>

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<p style="text-align: right;">Page 190</p> <p>1 the shipments' harm connection, and that's</p> <p>2 applied to me.</p> <p>3 So kind of literally the formula of</p> <p>4 those three combinations of analyses take</p> <p>5 damages and attribute them to misleading</p> <p>6 marketing by the defendants.</p> <p>7 Now, I don't want to stop my answer</p> <p>8 there, because I'm not making a determination</p> <p>9 that there might have been other actors,</p> <p>10 including distributors, including pharmacies,</p> <p>11 that may have intervened in that process and</p> <p>12 reduced the damages.</p> <p>13 I don't know what -- I'm not opining</p> <p>14 on their legal responsibility or what that</p> <p>15 empirical allocation is. I have a kind of</p> <p>16 total, and I'm not taking that total and saying,</p> <p>17 this part is for you and this part is for you.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. And when you say "this part is for you</p> <p>20 and this part is for you," you're talking about</p> <p>21 which part is attributable to misleading</p> <p>22 marketing as opposed to something else?</p> <p>23 A. Yes.</p> <p>24 And the other thing I would say about</p>	<p style="text-align: right;">Page 192</p> <p>1 unnecessary shipments"?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 Is that quote from his report, or</p> <p>4 something else?</p> <p>5 MR. KEYES: "Excessive and unnecessary</p> <p>6 shipments" are in his report, yes.</p> <p>7 A. It does ring true.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. So you have identified certain damages</p> <p>10 that you say are attributable to defendants'</p> <p>11 misconduct. Those are set forth in the tables</p> <p>12 at the end of your report, but those tables do</p> <p>13 not break out damages based on what's</p> <p>14 attributable to misleading marketing versus</p> <p>15 failures to control the supply chain versus</p> <p>16 excess of and unnecessary shipments, correct?</p> <p>17 A. Well, no, I wouldn't put it that way.</p> <p>18 The three-step empirical analysis associates</p> <p>19 those damages to misleading marketing. That's</p> <p>20 what Professor Rosenthal does connected to</p> <p>21 Cutler connected to McGuire. So just from an</p> <p>22 economic logical causality interpretation,</p> <p>23 that's what those numbers show. I -- having</p> <p>24 said that, there is a sense in which your</p>
<p style="text-align: right;">Page 191</p> <p>1 this is I don't necessarily think it's a zero</p> <p>2 sum game. And I'm not sure how one would</p> <p>3 approach it in the law of saying, well, maybe</p> <p>4 more than one party was responsible for</p> <p>5 something; then what happened, I don't know.</p> <p>6 But my own economic analysis is to say, here's</p> <p>7 the -- in aggregate what the damage is.</p> <p>8 MR. SOBOL: Should we take the lunch</p> <p>9 break?</p> <p>10 MR. KEYES: Soon. Just give me a few</p> <p>11 minutes.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. Do these calculations identify which</p> <p>14 damages are attributable to failures to control</p> <p>15 the supply chain?</p> <p>16 A. Well, as I tried to explain, my</p> <p>17 damages are a kind of total damage. And if</p> <p>18 you're asking me a hypothetical of what would</p> <p>19 have happened differently had somebody done</p> <p>20 something, first of all, it's probably not a</p> <p>21 good question for me. And then it wasn't part</p> <p>22 of my assignment to try to sort that out.</p> <p>23 Q. Do these calculations identify which</p> <p>24 damages are attributable to "excessive and</p>	<p style="text-align: right;">Page 193</p> <p>1 statement is correct, that given those total</p> <p>2 damages due to misleading advertising, I'm</p> <p>3 not -- I haven't taken them and decided what</p> <p>4 portion of these might be attributable to some</p> <p>5 other actors or who might be jointly responsible</p> <p>6 for something. I haven't done that analysis.</p> <p>7 Q. And have you identified or linked up</p> <p>8 damages with particular misleading marketing?</p> <p>9 A. Can you --</p> <p>10 MR. SOBOL: Objection.</p> <p>11 A. -- explain what you mean?</p> <p>12 BY MR. KEYES:</p> <p>13 Q. Well, you've referenced</p> <p>14 Professor Rosenthal's calculated -- made</p> <p>15 calculations about the number of opioid</p> <p>16 shipments that are attributable to misleading</p> <p>17 marketing and that her work feeds into</p> <p>18 Professor Cutler, right? And Professor Cutler's</p> <p>19 work feeds into your work, and you're the one</p> <p>20 that calculates damages?</p> <p>21 A. That's correct.</p> <p>22 Q. Do you offer any damages for this that</p> <p>23 are linked up with particular misleading</p> <p>24 marketing?</p>

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<p style="text-align: right;">Page 194</p> <p>1 MR. SOBOL: Objection.</p> <p>2 A. "Particular" meaning what?</p> <p>3 BY MR. KEYES:</p> <p>4 Q. Particular marketing by particular</p> <p>5 defendants that was identified as being</p> <p>6 misleading.</p> <p>7 MR. SOBOL: Objection.</p> <p>8 A. My understanding of what</p> <p>9 Professor Rosenthal did was to aggregate the sum</p> <p>10 of misleading advertising by the defendants in</p> <p>11 this case, and that's what followed through.</p> <p>12 I also understand that if some</p> <p>13 misleading advertising of that were pulled out</p> <p>14 in some way, then the calculation would be very</p> <p>15 straightforward to do the multiplications</p> <p>16 slightly differently, thanks to Excel, and then</p> <p>17 come up with different damages numbers, which is</p> <p>18 to say I think I'm capable of doing that, but in</p> <p>19 this report I didn't try to attribute to</p> <p>20 particular defendants.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. Particular groups of defendants or</p> <p>23 particular defendants, correct?</p> <p>24 MR. SOBOL: Objection.</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. Do you offer any calculation of the</p> <p>2 specific damages caused by the specific conduct</p> <p>3 of any particular manufacturer or manufacturing</p> <p>4 defendant?</p> <p>5 MR. SOBOL: Objection, asked and</p> <p>6 answered. Objection, asked and answered.</p> <p>7 A. I don't see the difference between</p> <p>8 what I've already talked about and this</p> <p>9 question, if there is. I'm sorry.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. Do you offer any calculation of the</p> <p>12 specific damages caused by the particular</p> <p>13 conduct of a particular distributor or</p> <p>14 distributor defendant?</p> <p>15 MR. SOBOL: Objection. Asked and</p> <p>16 answered.</p> <p>17 A. The answer is broadly similar to what</p> <p>18 I've answered already with respect to</p> <p>19 manufacturers. And what I do is estimate a</p> <p>20 total, and I don't attribute that to particular</p> <p>21 defendants, particular distributor defendants,</p> <p>22 nor do I attempt to allocate it even between the</p> <p>23 group of distributor defendants and the group of</p> <p>24 manufacturer defendants.</p>
<p style="text-align: right;">Page 195</p> <p>1 A. I've covered this, I think, in my</p> <p>2 answers.</p> <p>3 BY MR. KEYES:</p> <p>4 Q. Okay. Have you in your report offered</p> <p>5 any calculation of damages caused by any</p> <p>6 particular defendant?</p> <p>7 MR. SOBOL: Objection to the form.</p> <p>8 A. I think this is kind of a version of</p> <p>9 what I just spoke about, and I use the aggregate</p> <p>10 figures that Professor Rosenthal and David used</p> <p>11 to come up with aggregate damages.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. And those aggregate figures are based</p> <p>14 on misleading marketing?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 A. Well, the aggregate figures are based</p> <p>17 on step one of this, which is Professor</p> <p>18 Rosenthal's analysis connecting a measure of</p> <p>19 misleading advertising to total shipments. So</p> <p>20 that is literally the causal statement.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. And that follows through</p> <p>23 Professor Cutler's work into your work?</p> <p>24 A. That's correct.</p>	<p style="text-align: right;">Page 197</p> <p>1 BY MR. KEYES:</p> <p>2 Q. And the same is true for any retail</p> <p>3 pharmacy defendants, correct?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 A. I would answer in the same way, yes.</p> <p>6 BY MR. KEYES:</p> <p>7 Q. And the same is true for any, quote,</p> <p>8 other CSA registrant, to use your phrase?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 A. Maybe remind me what "the same" means,</p> <p>11 sir.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. "The same" means you haven't broken</p> <p>14 out the damages that you attribute to the</p> <p>15 conduct of any particular retail pharmacy</p> <p>16 defendant, just like you said for any particular</p> <p>17 distributor defendant or any particular</p> <p>18 manufacturer defendant.</p> <p>19 MR. SOBOL: Objection.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. Correct?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 A. Yes. What I have estimated is a total</p> <p>24 damages without attempting to attribute that to</p>

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<p>1 groups or individual defendants.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. Have you undertaken to determine what</p> <p>4 damages are attributable to the conduct of</p> <p>5 entities that are not defendants in this case --</p> <p>6 MR. SOBOL: Objection.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. -- such as pharmacies or prescribing</p> <p>9 doctors?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 A. Well, my analysis was directed to the</p> <p>12 defendant manufacturers and distributors in this</p> <p>13 case, and so it was that aspect of damages that</p> <p>14 I was asked to assess, and that's what I did.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. And so did you factor in the conduct</p> <p>17 of pharmacies or prescribing physicians in your</p> <p>18 work?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 A. That's not really a question at this</p> <p>21 stage of the analysis. That's a question that</p> <p>22 would be better directed to the -- to Rosenthal</p> <p>23 or Cutler who were attempting to associate</p> <p>24 shipments or harms to particular behavior. For</p>	<p>1 factors they're interested in, and if you do</p> <p>2 that, then you're kind of done. So they</p> <p>3 determined what they needed to know, and they</p> <p>4 designed a good way to do that.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. So what did they do to address the</p> <p>7 role of prescribing physicians or pharmacies, as</p> <p>8 you understand it?</p> <p>9 MR. SOBOL: Objection. Scope, asked</p> <p>10 and answered.</p> <p>11 A. They specified valid regressions that</p> <p>12 were capable of identifying causality in a</p> <p>13 reliable way.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. You use the word "attribute" or</p> <p>16 "attributable" throughout your report. What do</p> <p>17 you mean by that?</p> <p>18 MR. SOBOL: Well, can you show him an</p> <p>19 example?</p> <p>20 MR. KEYES: Sure.</p> <p>21 A. I'm just going to get a little bit of</p> <p>22 water while you page through there.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. Sure. Why don't you look at Page 4.</p>
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<p>1 me, that's an input at this point.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. Well, do you have an understanding,</p> <p>4 sitting here today, as to whether</p> <p>5 Professor Rosenthal or Professor Cutler factored</p> <p>6 into their analysis the conduct of pharmacies or</p> <p>7 prescribing doctors?</p> <p>8 MR. SOBOL: Objection. Scope.</p> <p>9 A. What they did was a valid empirical</p> <p>10 analysis to identify the independent effect of</p> <p>11 in Meredith's case misleading advertising, and</p> <p>12 in David Cutler's case shipments on a harm, and</p> <p>13 if one does that in a valid way, then that</p> <p>14 answers the question at issue.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. How does looking at the, what you</p> <p>17 describe as the independent factor of</p> <p>18 prescription shipments address the role that</p> <p>19 pharmacies or prescribing physicians played?</p> <p>20 MR. SOBOL: Objection. Scope.</p> <p>21 A. This is -- the reports that we're</p> <p>22 talking about now, the non-McGuire reports we're</p> <p>23 talking about are reliable and valid approaches</p> <p>24 to associating the magnitude of harm to the</p>	<p>1 A. Okay. I'll be right back.</p> <p>2 (Pause.)</p> <p>3 A. Okay. I'm on Page 4.</p> <p>4 Q. Okay. You talk about "whether there</p> <p>5 is a valid economic methodology for attributing</p> <p>6 a share of Bellwether government costs to</p> <p>7 defendants' misconduct; that is, to attribute</p> <p>8 damages to defendants' misconduct."</p> <p>9 A. Yes. Okay.</p> <p>10 Q. Do you see on Page 5, whether one may</p> <p>11 identify the costs of the divisions of the</p> <p>12 bellwether governments which may be attributable</p> <p>13 to defendants' misconduct?</p> <p>14 A. Yes, I see that. Well, actually I</p> <p>15 don't, but I believe you.</p> <p>16 Q. Damages are estimated by applying the</p> <p>17 estimates of the percent of harms attributable</p> <p>18 to defendants' misconduct.</p> <p>19 A. I'm sorry. Where is that last one?</p> <p>20 Q. It was on Page 7.</p> <p>21 A. Okay.</p> <p>22 Q. You talk about -- on Page 9 you talk</p> <p>23 about an economic framework used to calculate</p> <p>24 damages to the bellwether divisions that are</p>

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<p>1 attributable to prescription opioid shipments.</p> <p>2 A. I see.</p> <p>3 Q. 15, "the main economic criteria for</p> <p>4 identifying costs or providing services" --</p> <p>5 MR. SOBOL: Wait, let him get there --</p> <p>6 or me, he's faster than I am. Go ahead.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. "The main economic criteria for</p> <p>9 identifying costs of providing services</p> <p>10 attributable to the opioid" -- blank, missing</p> <p>11 word.</p> <p>12 A. I'm sorry, which paragraph are you in?</p> <p>13 Q. Paragraph 25.</p> <p>14 A. 25.</p> <p>15 Q. A few lines down there's a line that</p> <p>16 says, "Instead, as discussed in more detail</p> <p>17 below."</p> <p>18 Do you see that?</p> <p>19 A. Yes. Okay.</p> <p>20 Q. "The main economic criteria for</p> <p>21 identifying costs of providing services</p> <p>22 attributable to the opioid," and then there's a</p> <p>23 missing word.</p> <p>24 A. Yeah. Okay.</p>	<p>1 MR. SOBOL: Objection.</p> <p>2 A. I know this is a legal word, so let me</p> <p>3 just be sure of what I am saying about this.</p> <p>4 Given the valid empirical</p> <p>5 investigation of both Rosenthal and Cutler, who</p> <p>6 at the end of his report comes to a conclusion,</p> <p>7 there is a causal conclusion that Cutler brings</p> <p>8 forth to say that this share of the harm are due</p> <p>9 to defendants' misconduct. That's David</p> <p>10 Cutler's statement. Taking that statement as</p> <p>11 given, then what I say is that this is the</p> <p>12 magnitude of damages that are due to defendants</p> <p>13 misconduct.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. So you believe that Professor Cutler</p> <p>16 is providing that causal link, and you're</p> <p>17 relying on him for that causal link?</p> <p>18 MR. SOBOL: Objection. Asked and</p> <p>19 answered.</p> <p>20 A. Well, there's two causal links that</p> <p>21 are involved, both Rosenthal's report and</p> <p>22 Cutler's report.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. Okay. I was going to take them one at</p>
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<p>1 Q. So you keep saying "attribute" or</p> <p>2 "attributable." What do you mean by</p> <p>3 attributable?</p> <p>4 A. Due to.</p> <p>5 Q. Due to. What do you mean by "due to"?</p> <p>6 Are you offering the opinion that they are</p> <p>7 caused by the defendants' misconduct?</p> <p>8 MR. SOBOL: What's the "they"?</p> <p>9 MR. KEYES: The damages, whenever you</p> <p>10 refer to them.</p> <p>11 A. I'm relying on Rosenthal and Cutler</p> <p>12 before me to have done that causal work so that,</p> <p>13 given their findings, which I regard to be</p> <p>14 reliable, then these damages are due to</p> <p>15 defendants' misconduct.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. So are you offering an opinion on</p> <p>18 causation?</p> <p>19 MR. SOBOL: Asked and answered.</p> <p>20 Objection.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. You say you rely on Professor</p> <p>23 Rosenthal and Professor Cutler. I get it. Are</p> <p>24 you offering an opinion on causation?</p>	<p>1 a time, but we can take them together.</p> <p>2 You believe that Professor Rosenthal</p> <p>3 and Professor Cutler provide the causal links --</p> <p>4 MR. SOBOL: Objection.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. -- and you're relying on them for</p> <p>7 those causal links?</p> <p>8 MR. SOBOL: Objection.</p> <p>9 Which question do you want him to</p> <p>10 answer?</p> <p>11 MR. KEYES: The one I just asked.</p> <p>12 MR. SOBOL: Both of them? Objection</p> <p>13 to the form then.</p> <p>14 A. I do rely on Professor Rosenthal and</p> <p>15 Professor Cutler whose empirical analyses</p> <p>16 together reliably, in my view,</p> <p>17 associates/attributes the harms to the</p> <p>18 defendants' misconduct, and that's what I need</p> <p>19 in order to do my allocation of damages.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. Okay. So you are quantifying those</p> <p>22 harms --</p> <p>23 MR. SOBOL: Objection.</p> <p>24 BY MR. KEYES:</p>

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<p>1 Q. -- in your report?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 BY MR. KEYES:</p> <p>4 Q. You are quantifying what you are</p> <p>5 saying are the cost consequences of those harms</p> <p>6 to Summit County and Cuyahoga County?</p> <p>7 A. Yeah, that's broadly what I'm doing.</p> <p>8 Q. And you are relying on</p> <p>9 Professor Cutler and Professor Rosenthal for the</p> <p>10 causal link between the defendants' conduct and</p> <p>11 those cost consequences?</p> <p>12 MR. SOBOL: Objection. Asked and</p> <p>13 answered.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. Correct?</p> <p>16 MR. SOBOL: Objection. Asked and</p> <p>17 answered.</p> <p>18 A. I'm not sure what kind of trouble I</p> <p>19 might get myself into here, but yes, Rosenthal</p> <p>20 studies the beginning with the misconduct</p> <p>21 itself, to shipments. David picks it up at the</p> <p>22 shipment stage, looks at harms. And so putting</p> <p>23 those two reliable econometric investigations</p> <p>24 together, one can attribute the harms to the</p>	<p>1 getting a little testy. It's getting --</p> <p>2 MR. KEYES: I'm not getting testy.</p> <p>3 MR. SOBOL: No, you are.</p> <p>4 MR. KEYES: I'm just trying to get an</p> <p>5 answer to my question.</p> <p>6 MR. SOBOL: It was 20 minutes ago that</p> <p>7 I asked for the lunch break. I have been more</p> <p>8 than gentlemanly about this.</p> <p>9 MR. KEYES: I would like an answer to</p> <p>10 my question. So --</p> <p>11 MR. SOBOL: "Well, I'm not testy?"</p> <p>12 Yes, you are.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. You are quantifying what you are</p> <p>15 saying are the cost consequences of the harms</p> <p>16 that Professor Cutler and Professor Rosenthal</p> <p>17 link up with the defendants' conduct. Is that</p> <p>18 an accurate --</p> <p>19 MR. SOBOL: Objection.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. -- statement or not?</p> <p>22 MR. SOBOL: Objection. Asked and</p> <p>23 answered.</p> <p>24 A. I think that was -- you're just</p>
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<p>1 misconduct. And then --</p> <p>2 BY MR. KEYES:</p> <p>3 Q. And that's the work they're doing?</p> <p>4 MR. SOBOL: He hasn't finished.</p> <p>5 A. Then once those shares have been</p> <p>6 determined by Professor Cutler, my work is to</p> <p>7 take those shares, apply them to the variable</p> <p>8 costs, and determine the dollar number.</p> <p>9 BY MR. KEYES:</p> <p>10 Q. All right. So you are quantifying</p> <p>11 what you are saying are the cost consequences of</p> <p>12 the harms that Professor Cutler and Professor</p> <p>13 Rosenthal link up with the defendants' conduct?</p> <p>14 MR. SOBOL: Objection. Asked and</p> <p>15 answered.</p> <p>16 A. Well, I mean, I'm -- the same question</p> <p>17 has come at me like four or five times now, so</p> <p>18 I'll just defer to my earlier answers on this,</p> <p>19 if that's all right.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. Did I say something that was</p> <p>22 incorrect?</p> <p>23 MR. SOBOL: Objection.</p> <p>24 Let's take a lunch break. People are</p>	<p>1 quoting from me, is that right?</p> <p>2 Q. I'm repeating my question. Is that</p> <p>3 accurate or not?</p> <p>4 MR. SOBOL: I don't know where you</p> <p>5 are.</p> <p>6 BY MR. KEYES:</p> <p>7 Q. If it's inaccurate, tell me why.</p> <p>8 MR. SOBOL: I still don't know where</p> <p>9 we are.</p> <p>10 Do you understand the question that's</p> <p>11 before you?</p> <p>12 A. I want to go to lunch, too, so you ask</p> <p>13 a clear question, I'll give a fresh answer, and</p> <p>14 we'll see where we are.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. In your damages report you are</p> <p>17 quantifying what you are saying are the cost</p> <p>18 consequences of the harms that Professor Cutler</p> <p>19 and Professor Rosenthal link up with the</p> <p>20 defendants' conduct?</p> <p>21 MR. SOBOL: Objection. Asked and</p> <p>22 answered.</p> <p>23 A. There's three steps in this that make</p> <p>24 it a causal connection between defendants'</p>

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<p style="text-align: right;">Page 210</p> <p>1 misconduct and the cost consequences to the 2 local governments. 3 The first connection is investigated 4 by Professor Rosenthal who connects the 5 misconduct to the shipments. Cutler picks up 6 the shipments, connects up the harms, comes to a 7 conclusion for me about the share of harms 8 attributable to -- and I mean that in a causal 9 way -- attributable to defendants' misconduct, 10 and that allows me to use that share to quantify 11 it in dollar terms. 12 MR. SOBOL: Thank you. 13 MR. KEYES: Okay. Let's take a break 14 for lunch. 15 THE VIDEOGRAPHER: The time 1:02 p.m. 16 and we're off the record. 17 (Whereupon, a luncheon recess was 18 taken.) 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 212</p> <p>1 A. Yes. 2 Q. Then you say, "In the absence of an 3 opioid crisis, the Chief would spend 8 hours 4 attending to non-opioid-related problems. If 5 the opioid crisis causes the Chief to spend 1 6 hour a day on opioid-related issues, the time 7 the Chief has for other issues falls by 1 hour." 8 Do you see that? 9 A. I do, yes. 10 Q. And then you acknowledge that the 11 government's spending on the chief is fixed. 12 Do you see that? 13 A. Yes, I don't see it, but I -- 14 Q. Well, the next sentence says -- 15 A. It's part of the example. I'm not 16 disputing it. 17 Q. You say in the next sentence, "What is 18 'fixed' in this example is the total work time 19 of (and spending on) the Chief of the Sheriff's 20 Department." 21 A. Yes. 22 Q. Okay. So the government doesn't spend 23 any more or less if the chief spends any time on 24 opioid-related issues, correct?</p>
<p style="text-align: right;">Page 211</p> <p>1 AFTERNOON SESSION 2 3 THE VIDEOGRAPHER: The time is 4 2:05 p.m., and we're on the record. 5 BY MR. KEYES: 6 Q. Professor McGuire, would you turn to 7 Page 16 of your report, which is McGuire Exhibit 8 Number 1? Are you there? 9 A. Yes. 10 Q. And in Paragraph 26 you say -- 11 consider a hypothetical, right? 12 A. Yes, I see that. 13 Q. You say, "Suppose there is only one 14 Chief and there would need to be one Chief 15 regardless of whether there were an opioid 16 crisis," right? 17 A. I see that. 18 Q. And then you continue, "Suppose 19 further that the Chief works 8 hours a day and 20 his or her salary would be the same with or 21 without opioid-related activities." Correct? 22 A. I see that, yes. 23 Q. So in your hypothetical, the sheriff 24 is paid a salary and works eight hours a day?</p>	<p style="text-align: right;">Page 213</p> <p>1 A. That's the nature of this example, 2 yes. 3 Q. Okay. And then you say if he has to 4 start spending one hour per day on 5 opioid-related issues, then he only has seven 6 hours to spend on non-opioid-related issues. 7 Correct? 8 A. That's what the example says, yes. 9 Q. And you then assert that "The 10 reallocation of that time to opioid-related 11 activity result in a loss of time and effort on 12 alternative activities, which is an economic 13 cost." Correct? 14 A. That's what I say. 15 Q. And that's an opportunity cost? 16 A. You can think of that as an 17 opportunity cost. 18 Q. Which means that something is given up 19 when the chief has to spend that one hour on 20 opioid-related issues, correct? 21 A. So far so good. 22 Q. And that opportunity cost could be as 23 simple as leisure time of the chief? 24 MR. SOBOL: Objection.</p>

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<p style="text-align: right;">Page 214</p> <p>1 A. Well, there you've lost me.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. It could be.</p> <p>4 MR. SOBOL: Objection.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. That's not what you specify in your</p> <p>7 hypothetical, but that is something that could</p> <p>8 be given up by the chief?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 A. I don't know. You're adding something</p> <p>11 here. This is --</p> <p>12 BY MR. KEYES:</p> <p>13 Q. I am.</p> <p>14 A. This is work-related activities is</p> <p>15 what the point of the example is.</p> <p>16 Q. Okay. But the opportunity cost is not</p> <p>17 a financial cost --</p> <p>18 MR. SOBOL: Objection.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. -- because the sheriff, the chief's</p> <p>21 employer, doesn't pay anything more if the chief</p> <p>22 spends one hour on opioid-related activities and</p> <p>23 seven hours on non-opioid-related activities</p> <p>24 instead of all eight hours on non-opioid-related</p>	<p style="text-align: right;">Page 216</p> <p>1 MR. SOBOL: Objection. Asked and</p> <p>2 answered.</p> <p>3 A. I'm really not following what you're</p> <p>4 trying to get at here.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. What is the extra money that the</p> <p>7 chief's employer is spending as a result of the</p> <p>8 chief spending one hour per day on</p> <p>9 opioid-related activities instead of all eight</p> <p>10 hours on non-opioid-related activities?</p> <p>11 A. Okay. This example, I think, is very</p> <p>12 explicit about that, and it states, as you read</p> <p>13 into the record a few minutes ago, that the</p> <p>14 spending on the chief is fixed. And the point</p> <p>15 of the example is even in this context in which</p> <p>16 the number of hours worked and the spending on</p> <p>17 the chief is fixed, the appropriate economic</p> <p>18 financial measure of the loss to the</p> <p>19 jurisdiction is the wage of the chief spent on</p> <p>20 opioids.</p> <p>21 Q. If the chief goes from eight hours a</p> <p>22 day on non-opioid-related activities to one hour</p> <p>23 on opioid-related activities, and seven hours on</p> <p>24 non-opioid-related activities, is there any</p>
<p style="text-align: right;">Page 215</p> <p>1 activities, correct?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 A. No, I disagree with that, too. The</p> <p>4 appropriate metric of this opportunity cost is</p> <p>5 financial.</p> <p>6 BY MR. KEYES:</p> <p>7 Q. But it's not a financial cost. His</p> <p>8 employer doesn't spend anything more --</p> <p>9 MR. SOBOL: Objection. Asked and</p> <p>10 answered.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. -- is that correct?</p> <p>13 MR. SOBOL: Objection. Asked and</p> <p>14 answered.</p> <p>15 A. Well, the example lays out and, in</p> <p>16 fact, specifies that even in the situation in</p> <p>17 which the time and the spending on the chief is</p> <p>18 the same, the appropriate economic approach to</p> <p>19 this question is the economic value of the</p> <p>20 activities given up if the chief spends an hour</p> <p>21 on opioids.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. That's the economic value. That's not</p> <p>24 a financial cost necessarily.</p>	<p style="text-align: right;">Page 217</p> <p>1 out-of-pocket expense for his employer?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 A. I didn't hear the first part of your</p> <p>4 hypothetical, sorry.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. If the chief goes from eight hours a</p> <p>7 day on non-opioid-related activities to one hour</p> <p>8 per day on opioid-related activities, and seven</p> <p>9 hours per day on non-opioid-related activities,</p> <p>10 is there any out-of-pocket expense for his</p> <p>11 employer?</p> <p>12 A. What do you mean by "out-of-pocket</p> <p>13 expense"?</p> <p>14 Q. Is there any additional expenditure of</p> <p>15 funds by the chief's employer when that switch</p> <p>16 occurs?</p> <p>17 MR. SOBOL: Objection.</p> <p>18 A. This example states that there is --</p> <p>19 the spending is fixed as the chief spends an</p> <p>20 hour on opioids instead of on the other</p> <p>21 problems, and it's intended to convey that even</p> <p>22 in this situation the appropriate economic</p> <p>23 measure relief is the cost of the chief's time,</p> <p>24 one hour, spent on opioids.</p>

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<p style="text-align: right;">Page 218</p> <p>1 BY MR. KEYES:</p> <p>2 Q. Okay. So you acknowledge that in that</p> <p>3 situation, the switch from eight hours to seven</p> <p>4 for non-opioid-related activities and one for</p> <p>5 opioid-related activities does not cause his</p> <p>6 employer any out-of-pocket cost, any increased</p> <p>7 out-of-pocket costs?</p> <p>8 MR. SOBOL: Objection.</p> <p>9 A. Even if the spending is fixed, then</p> <p>10 the appropriate economic measure of the cost is</p> <p>11 the value of the chief's time</p> <p>12 associated/attribution to opioids.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Sir, you've said that in your report,</p> <p>15 and you said it several times today, so I think</p> <p>16 you're covered on that point.</p> <p>17 A. Okay. Good.</p> <p>18 Q. I'd ask you to answer my question.</p> <p>19 You keep referring to even if it is fixed.</p> <p>20 I'm asking, because it's fixed, even</p> <p>21 though the sheriff switches how he spends those</p> <p>22 eight hours a day, his employer is not incurring</p> <p>23 any additional out-of-pocket cost, correct?</p> <p>24 MR. SOBOL: Objection, asked and</p>	<p style="text-align: right;">Page 220</p> <p>1 more money because he changes how he spends</p> <p>2 those eight hours a day, correct?</p> <p>3 MR. SOBOL: Objection.</p> <p>4 Mischaracterizes the testimony.</p> <p>5 A. I just want to read this back here.</p> <p>6 In this example the government is paying for one</p> <p>7 hour of the chief's time to deal with opioids.</p> <p>8 What is fixed in this example is the total work</p> <p>9 time of and spending on the chief.</p> <p>10 I'm mystified why you have to ask me a</p> <p>11 question that is the spending on the chief</p> <p>12 fixed, and --</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Because you've already said that in</p> <p>15 your report and I'm trying to put -- I'm trying</p> <p>16 to see if that's the same as saying there's no</p> <p>17 additional out-of-pocket expenditure by his</p> <p>18 employer. Yes or no.</p> <p>19 MR. SOBOL: Objection. Asked and</p> <p>20 answered. It's not a yes-or-no question.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. He did not answer that question.</p> <p>23 MR. SOBOL: He didn't answer it the</p> <p>24 way you want him to answer the question, but</p>
<p style="text-align: right;">Page 219</p> <p>1 answered. Objection, asked and answered.</p> <p>2 A. The assumption in the -- my</p> <p>3 hypothetical is that the spending is fixed.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. Which means there's no additional</p> <p>6 out-of-pocket expense?</p> <p>7 MR. SOBOL: Are you finished with your</p> <p>8 answer?</p> <p>9 BY MR. KEYES:</p> <p>10 Q. That's what my question is about.</p> <p>11 A. Well, it puzzles me a little why you</p> <p>12 have to ask a question if I think I stated</p> <p>13 extremely clearly in my report that the spending</p> <p>14 is fixed.</p> <p>15 But the point of the example is that</p> <p>16 that does not imply that there's no economic</p> <p>17 cost to the opioid activities.</p> <p>18 Q. Right. So answer my question. You</p> <p>19 keep saying it's fixed. You're an economist,</p> <p>20 you're familiar with fixed, not necessarily</p> <p>21 everybody is familiar with fixed. And another</p> <p>22 way of phrasing that is the amount that his</p> <p>23 employer spends is set, it is fixed, and it will</p> <p>24 not change. His employer will not spend any</p>	<p style="text-align: right;">Page 221</p> <p>1 he's the one who is testifying, not you.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. My question is, is there an additional</p> <p>4 out-of-pocket expenditure by his employer when</p> <p>5 the make-up -- how he spends his eight hours</p> <p>6 changes? That's a yes-or-no question. It's not</p> <p>7 about fixed. It's about whether there's an</p> <p>8 additional out-of-pocket expenditure when he</p> <p>9 goes from eight hours on non-opioid to seven</p> <p>10 hours on non-opioid and one hour on opioid. You</p> <p>11 can say no, you can say yes, and then you can</p> <p>12 explain your answer. Yes or no, is there an</p> <p>13 additional out-of-pocket expenditure?</p> <p>14 MR. SOBOL: So which question do you</p> <p>15 want him to ask and -- be asked now? You asked</p> <p>16 two questions in that paragraph.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. In your hypothetical, when he goes</p> <p>19 from eight hours on non-opioid-related</p> <p>20 activities to seven hours on non-opioid related</p> <p>21 activities and one hour on opioid-related</p> <p>22 activities --</p> <p>23 A. I think we got that -- sorry to</p> <p>24 interrupt.</p>

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<p>1 Q. -- does his employer have any</p> <p>2 additional out-of-pocket expense as compared to</p> <p>3 when he spent all eight hours on</p> <p>4 non-opioid-related activities?</p> <p>5 MR. SOBOL: Objection. Asked and</p> <p>6 answered.</p> <p>7 A. This is going to be two sentences.</p> <p>8 The paragraph makes the assumption that the</p> <p>9 spending on the chief is fixed. That does not,</p> <p>10 however, imply that there is no economic cost to</p> <p>11 the diversion of the chief's time to the opioid</p> <p>12 crisis.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. And you didn't say a word about</p> <p>15 out-of-pocket expense, which is what my question</p> <p>16 is about.</p> <p>17 So in that hypothetical, is there an</p> <p>18 additional out-of-pocket expenditure by his</p> <p>19 employer?</p> <p>20 MR. SOBOL: I instruct you not to</p> <p>21 answer.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. Yes or no?</p> <p>24 MR. SOBOL: He's answered the question</p>	<p>1 time, downtime, where he's not actually working,</p> <p>2 in that case --</p> <p>3 MR. SOBOL: So he's getting paid to</p> <p>4 work but he's not working?</p> <p>5 MR. KEYES: He's getting paid for</p> <p>6 eight hours, and only working for five hours,</p> <p>7 and the rest is downtime.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. In that case, having to spend an hour</p> <p>10 on opioid-related issues does not take away any</p> <p>11 of the time he needs to spend on</p> <p>12 non-opioid-related issues, correct?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 A. No, I disagree with that.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. If he only works five hours and he's</p> <p>17 paid to work eight hours, then how does working</p> <p>18 an hour on opioid-related activities take away</p> <p>19 from the time he's actually spending on</p> <p>20 non-opioid-related activities?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 A. Well, this is something I explicitly</p> <p>23 addressed in my report, which is that it's not</p> <p>24 realistic to expect that each individual or each</p>
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<p>1 five times already.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. Are you saying you can't answer my</p> <p>4 question yes or no? Is that your position?</p> <p>5 MR. SOBOL: Which question do you want</p> <p>6 him to answer yes or no?</p> <p>7 MR. KEYES: Whether there's an</p> <p>8 additional out-of-pocket expenditure in that</p> <p>9 scenario.</p> <p>10 MR. SOBOL: He's given the answer</p> <p>11 several times.</p> <p>12 (Phone interruption.)</p> <p>13 MR. KEYES: Will you mark this point</p> <p>14 in the transcript?</p> <p>15 MR. SOBOL: What was that?</p> <p>16 MR. KEYES: I think it's an</p> <p>17 internal --</p> <p>18 MR. SOBOL: Sorry.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. Okay. Now I'm going to change your</p> <p>21 hypothetical.</p> <p>22 What if the chief is paid to work</p> <p>23 eight hours a day but actually only does work</p> <p>24 five hours a day, okay, and the rest is leisure</p>	<p>1 department is fully occupied at all times. And,</p> <p>2 in fact, it's not even optimal from the</p> <p>3 standpoint of the government not to have some</p> <p>4 slack capacity in activities of especially a</p> <p>5 public safety official.</p> <p>6 The demands on these officials are</p> <p>7 stochastic, which -- by which I mean it kind of</p> <p>8 can be up and down, and you want to have some</p> <p>9 slack capacity. The diversion of an hour of the</p> <p>10 chief's time from slack capacity doesn't mean</p> <p>11 it's not coming at a cost to the government.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. My question didn't pose that. I'm</p> <p>14 posing a hypothetical. You're an expert. I get</p> <p>15 to ask you hypothetical questions, and I'd ask</p> <p>16 you to answer the hypothetical.</p> <p>17 In my hypothetical he doesn't actually</p> <p>18 work eight hours a day. He's paid to work eight</p> <p>19 hours a day. He's on the job eight hours a day,</p> <p>20 actually only does work five hours a day, and</p> <p>21 the other three hours are downtime. Okay?</p> <p>22 That's the hypothetical.</p> <p>23 In that hypothetical situation, asking</p> <p>24 him to spend an hour each day on opioid-related</p>

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<p style="text-align: right;">Page 226</p> <p>1 activities does not take away any time, any of</p> <p>2 the five hours he has to spend on</p> <p>3 non-opioid-related activities, correct?</p> <p>4 MR. SOBOL: Objection. Asked and</p> <p>5 answered.</p> <p>6 A. Well, I think it's, you know, simply a</p> <p>7 farfetched and unrealistic hypothetical with</p> <p>8 respect to staff of a -- any government</p> <p>9 department in which the efficient level of</p> <p>10 staffing would imply that people don't sit</p> <p>11 around half of the day doing nothing, and it</p> <p>12 does imply that there's excess capacity in</p> <p>13 especially public safety related positions.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. Sir --</p> <p>16 A. So I'm just not prepared to agree with</p> <p>17 you that you can make up an hour without having</p> <p>18 it come out of some capacity of the chief to do</p> <p>19 something else.</p> <p>20 Q. It might come out of his capacity, it</p> <p>21 might come out of his downtime, it might come</p> <p>22 out of his leisure time, but it is not taking</p> <p>23 away from the five hours that he has to spend on</p> <p>24 non-opioid-related activities precisely because</p>	<p style="text-align: right;">Page 228</p> <p>1 MR. KEYES: I want him to answer my</p> <p>2 question.</p> <p>3 MR. SOBOL: Yes, I understand. But do</p> <p>4 you want him to give the same answer again, or</p> <p>5 what do you want to do?</p> <p>6 MR. KEYES: I'd like you to object,</p> <p>7 and then he can answer my question.</p> <p>8 MR. SOBOL: Okay. I object.</p> <p>9 BY MR. KEYES:</p> <p>10 Q. You've made your distaste clear,</p> <p>11 that's fine, but it's my hypothetical. I want</p> <p>12 you -- I don't --</p> <p>13 MR. SOBOL: He's telling you your</p> <p>14 hypothetical doesn't make any sense.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. I'm not asking you to handicap whether</p> <p>17 my hypothetical is correct or not. I'm asking</p> <p>18 you to answer within the scope of my</p> <p>19 hypothetical, logically asking him to spend one</p> <p>20 more hour on opioid-related activities does not</p> <p>21 take away from the five hours that he's been</p> <p>22 spending on non-opioid-related activities,</p> <p>23 correct, as a matter of logic?</p> <p>24 MR. SOBOL: Objection. Asked and</p>
<p style="text-align: right;">Page 227</p> <p>1 he has that capacity, correct?</p> <p>2 MR. SOBOL: Objection. Asked and</p> <p>3 answered. I've counted four times now.</p> <p>4 A. Which I don't agree with that</p> <p>5 depiction of the role of staffing in a city</p> <p>6 government, or any government, or really any</p> <p>7 position at all.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. Sir, you can call my hypotheticals</p> <p>10 whatever you want. You can affix whatever</p> <p>11 adjective. I'm asking you within the parameters</p> <p>12 of that hypothetical whether you agree with it,</p> <p>13 because it is a matter of logic that if you're</p> <p>14 only spending five hours and you're not doing</p> <p>15 any work with the other three hours, then asking</p> <p>16 someone to spend one of those three hours on</p> <p>17 opioid-related activities is not pulling away</p> <p>18 from the five hours on non-opioid-related</p> <p>19 activities. Do you agree with me as a matter of</p> <p>20 logic within that hypothetical?</p> <p>21 MR. SOBOL: Wait. Objection. Asked</p> <p>22 and answered five times.</p> <p>23 You want him to give the same answer,</p> <p>24 you want to --</p>	<p style="text-align: right;">Page 229</p> <p>1 answered.</p> <p>2 Go ahead, Tom.</p> <p>3 A. I think the -- another way to kind of</p> <p>4 go at this from the standpoint of an answer is</p> <p>5 that the hypothetical is really incomplete. It</p> <p>6 doesn't recognize the stochastic nature of</p> <p>7 demands on a public safety official that imply</p> <p>8 there always will be downtime, or almost always</p> <p>9 will be downtime for a public official. And</p> <p>10 it's just simply not correct as a matter of</p> <p>11 logic that devoting an extra hour to</p> <p>12 opioid-related activities has no cost to a local</p> <p>13 government in terms of other things personnel</p> <p>14 might do.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. You keep reverting to the opinions you</p> <p>17 want to offer in this case, and you're offering</p> <p>18 them, and you're entitled to offer them. I'm</p> <p>19 not asking you to repeat your opinions. I'm</p> <p>20 asking you to answer my hypothetical. My</p> <p>21 hypothetical wasn't about whether there was a</p> <p>22 cost to local government or not.</p> <p>23 My question was, if he spends that one</p> <p>24 hour on opioid-related activities, it does not</p>

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<p>1 take away from the five hours that he's spending</p> <p>2 on non-opioid-related activities, because by</p> <p>3 definition he's on the job for eight hours. It</p> <p>4 may take away from his leisure time. It may</p> <p>5 take away from his excess capacity. It does not</p> <p>6 keep him from doing the five hours of work on</p> <p>7 non-opioid-related activities. Do you agree</p> <p>8 with that as a matter of logic?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 This is the seventh time, and unless</p> <p>11 the witness has any more to say in response to</p> <p>12 the question, I suggest that he just say that.</p> <p>13 A. I don't have anything new to add. If</p> <p>14 you would like me to go back over my answer,</p> <p>15 I'll do so.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. Okay. Now I'm going to change the</p> <p>18 hypothetical, and again I'm going to ask you to</p> <p>19 stick with my hypothetical, whether you think</p> <p>20 it's realistic or not. Okay?</p> <p>21 A. Okay.</p> <p>22 MR. SOBOL: No, that's not okay. Hold</p> <p>23 on a second. He's not to instruct you how to</p> <p>24 answer the questions. I do.</p>	<p>1 Now, in that hypothetical, in that</p> <p>2 hypothetical, if he worked efficiently and got</p> <p>3 the non-opioid-related activities done in five</p> <p>4 hours, then spending an hour on opioid-related</p> <p>5 issues would not take away from the work on</p> <p>6 non-opioid-related activities, correct?</p> <p>7 MR. SOBOL: Is that a question?</p> <p>8 Objection to the form.</p> <p>9 BY MR. KEYES:</p> <p>10 Q. Correct. The logic of a hypothetical.</p> <p>11 MR. SOBOL: Objection to form.</p> <p>12 A. I kind of get what you're driving at,</p> <p>13 but I didn't get -- if you wouldn't mind giving</p> <p>14 me the hypothetical again.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. Sure. I've got -- in my hypothetical</p> <p>17 you have a chief that works very inefficiently</p> <p>18 for eight hours a day, and he takes eight hours</p> <p>19 to do the work on the job for eight hours a day,</p> <p>20 and he takes the eight hours to do the work, but</p> <p>21 he could easily get it done in five hours and he</p> <p>22 could spend the other three on leisure or</p> <p>23 downtime.</p> <p>24 If he worked efficiently and got his</p>
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<p>1 MR. KEYES: No, you're not to instruct</p> <p>2 him now to answer the questions either. And</p> <p>3 I've been rather permissive. You can object.</p> <p>4 You can instruct him not to answer. You cannot</p> <p>5 instruct him how to answer. And I'd ask you to</p> <p>6 stop doing it.</p> <p>7 MR. SOBOL: You're right. You're</p> <p>8 right about that.</p> <p>9 But he is not to tell you -- instruct</p> <p>10 you how to answer the question. If you think</p> <p>11 that that hypothetical is unrealistic and you</p> <p>12 can't answer the question as it's framed, then</p> <p>13 you answer truthfully as you have been, okay,</p> <p>14 and not if he tells you, you know, accept my</p> <p>15 unrealistic hypothetical. That's not what</p> <p>16 you're supposed to be doing. You're supposed to</p> <p>17 answer the questions truthfully.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. A new hypothetical.</p> <p>20 The chief works very inefficiently for</p> <p>21 those eight hours a day. He takes eight hours</p> <p>22 to do the work, but he could easily get it done</p> <p>23 in five hours, and he could use the rest of that</p> <p>24 time for leisure or downtime. Okay?</p>	<p>1 work done in five hours instead of taking the</p> <p>2 full eight hours, then he would have three hours</p> <p>3 of leisure, or if he were asked to spend an hour</p> <p>4 of those three hours on opioid-related</p> <p>5 activities it still wouldn't take away from him</p> <p>6 getting the non-opioid-related work done,</p> <p>7 correct?</p> <p>8 MR. SOBOL: Object to the form.</p> <p>9 A. Well, I think this is also an</p> <p>10 inappropriate way to characterize the economics</p> <p>11 of this situation. Let me go about this by</p> <p>12 making an analogy for you.</p> <p>13 Suppose you were talking about</p> <p>14 consumers instead of local government, and you</p> <p>15 were asked to -- say someone bangs up my car and</p> <p>16 I have to pay \$75 to fix the car. So I don't</p> <p>17 make any more. My income is fixed. And I have</p> <p>18 to take 75 of my dollars and use it to fix my</p> <p>19 car.</p> <p>20 What is the cost to that consumer of</p> <p>21 having to fix the car? What I say it is, is</p> <p>22 \$75. It doesn't matter from an economic</p> <p>23 standpoint that if you look at some other item</p> <p>24 of the budget I spend my money on -- suppose I</p>

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<p>1 go to restaurants with some other part of my 2 money and I don't make a very good choice of 3 restaurants, I choose food inefficiently, I 4 don't get the most calories per dollar or 5 however you want to -- however you want to 6 characterize the efficiency with which I spend 7 the rest of my money, it's still \$75. 8 That's the kind of mainstream economic 9 way to quantify the cost, even if you start 10 putting in stuff about he's not spending his 11 money efficiently on his restaurants. 12 BY MR. KEYES: 13 Q. You're completely changing the 14 hypothetical. In your hypothetical he has to 15 spend the \$75 on one thing or another thing, and 16 you've already admitted in my hypothetical that 17 his employer is going to spend the same amount 18 because it's paying him a salary regardless of 19 how he spends the time. So I don't want to 20 spend time on your hypotheticals. They're 21 completely different than mine. 22 In my hypothetical, if he works more 23 efficiently and, therefore, he gets his 24 non-opioid-related work done in five hours and</p>	<p>1 A. I don't agree with that. 2 BY MR. KEYES: 3 Q. And you've counted that lost leisure 4 time as damages to his employer. 5 MR. SOBOL: Objection. 6 A. I don't agree with that at all. 7 BY MR. KEYES: 8 Q. Have you heard of Parkinson's law? 9 A. Parkinson's law? 10 Q. Yes. 11 A. I have. Give me a hint. 12 Q. Well, what does Parkinson's law say, 13 as you remember it? 14 A. I need a hint. I know I've heard of 15 it, but -- 16 Q. Have you heard of Parkinson's law 17 saying that work expands to fill the time 18 available for its completion? 19 A. I have heard of that, yes. 20 Q. Have you done any studies of 21 Parkinson's law? 22 A. Well, I would say yes, I have. 23 Q. Okay. What have you done to study 24 Parkinson's law?</p>
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<p>1 he has three extra hours, he has three hours of 2 leisure time, or if he's asked to spend an hour 3 on opioid-related activities he still gets the 4 five hours of work done on non-opioid-related 5 activities and he's got two hours left for 6 leisure time, do you disagree with the logic of 7 that? You can tell me it's not realistic, but 8 do you disagree with the logic of that 9 hypothetical? 10 MR. SOBOL: Objection. 11 A. I do disagree with the logic of that 12 hypothetical. 13 BY MR. KEYES: 14 Q. In my hypothetical the only 15 opportunity cost is the chief loses leisure 16 time -- 17 MR. SOBOL: Object. 18 BY MR. KEYES: 19 Q. -- because instead of three hours of 20 leisure time, now he only has two, with that 21 third hour being spent on opioid-related 22 activities. 23 MR. SOBOL: Objection. Asked and 24 answered.</p>	<p>1 A. A form of Parkinson's law which is in 2 my -- part of my research that has to do with 3 healthcare payment. 4 So the analogy to Parkinson's law here 5 would be if a healthcare provider, say a 6 hospital, were given a prospective payment, it's 7 called, for taking care of a patient within a 8 hospital, the fixed payment might be \$4,000, 9 just to choose a number, and the pressure of the 10 market with hospitals competing for patients 11 would imply that hospitals would spend up to 12 \$4,000 to take care of that patient, which is a 13 version of Parkinson's law. 14 Q. Is that study referenced anywhere in 15 your CV? 16 A. Many, many times in my -- I've studied 17 that many times. 18 Q. And what is that study called, if we 19 look for it in your CV? 20 A. There would be the words prospective 21 payment. I work on capitation payments to 22 health plans, I work on physician payments and 23 fixed pricing to physicians, hospitals, and 24 other healthcare providers, all of which have</p>

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<p style="text-align: right;">Page 238</p> <p>1 this element of the effect of competition, 2 implying that plans and providers will tend to 3 spend so as to use the budget they're offered. 4 Q. And is that a study of how they use 5 time, or how they use dollars? 6 A. That's a big part of their providers' 7 budgets are the time that they and their workers 8 spend. 9 Q. Have you studied the application of 10 Parkinson's law in the workplace? 11 A. Well, these are workplaces. I'm 12 talking about hospitals, doctors' offices. 13 Q. You're talking about places where 14 people work. I'm asking, have you studied the 15 application of Parkinson's law to how people 16 spend their time in the workplace? 17 MR. SOBOL: Objection. Asked and 18 answered. 19 A. How people spend their time? I'm not 20 sure what you're getting at here. 21 BY MR. KEYES: 22 Q. Well, have you conducted a study of 23 Parkinson's law as applied to how employees 24 spend their time in the workplace?</p>	<p style="text-align: right;">Page 240</p> <p>1 to convey to the employee, healthcare provider, 2 incentives so they address the multi-tasking 3 problem in a way that is in the interest of the 4 regulator. 5 So this -- that's a little abstract, 6 but it has to do with things like pay for 7 performance, has to do with whether that matters 8 to providers, in what ways pay for performance 9 affects providers. 10 I've done this even in the substance 11 abuse area to evaluate state-based pay for 12 performance systems in substance abuse to see 13 how providers respond to that and address the 14 multiple objectives the state has in that 15 context. 16 Q. Have you read any studies of the 17 application of Parkinson's law in the workplace 18 as applied to how employees spend their time? 19 A. Well, if you permit me to include the 20 studies I've just been referring to as falling 21 within the broad category of the level of 22 resources available and the activities of 23 workers, then yeah, I read all kinds of things 24 in this area.</p>
<p style="text-align: right;">Page 239</p> <p>1 MR. SOBOL: Objection. Asked and 2 answered. 3 A. The Parkinson's law is the time -- the 4 work fills the time available. The how they 5 spend their time is not a Parkinson's law 6 question. It's a question about the nature of 7 their work. 8 I'm just trying to understand what 9 your next hypothetical is about. 10 BY MR. KEYES: 11 Q. So have you studied the application of 12 Parkinson's law to see how employees spend their 13 time in the workplace during the workday? 14 MR. SOBOL: Objection. Asked and 15 answered again. 16 A. Well, I'm going to say yes, although I 17 think it's -- the analogy to Parkinson's law is 18 not as close. 19 The term in economics for this area of 20 inquiry would be the multi-tasking problem in 21 which an employee has a job to do, but that job 22 involves a number of different goals or 23 activities. And the objective of the employer, 24 or in some cases the regulator or the payer, is</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. But your answer is yes with that broad 2 category that you've just described? 3 A. Well, I'm a health economist, so I 4 tend to read things in the health economics 5 world. 6 Q. Under Parkinson's law, you cannot 7 conclude that the chief needs eight hours to do 8 his work just because he spent eight hours on 9 it, correct? 10 A. Under Parkinson's law. Maybe you 11 could be specific about what you mean by "under 12 Parkinson's law." 13 Q. Well, given Parkinson's law, which 14 says the time it takes to complete work expands 15 to fill the time allotted, if Parkinson's law 16 holds true, you can't conclude that the chief 17 needs eight hours to do his work just because he 18 spent eight hours doing it -- 19 MR. SOBOL: Objection. Form. 20 BY MR. KEYES: 21 Q. -- correct? 22 MR. SOBOL: Objection. Form. 23 A. I know you get to ask the questions, 24 but under my interpretation of Parkinson's law</p>

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<p>1 here, it would be something like the work 2 expands to fill the time available. And I'm 3 kind of like that at the office. I will go in 4 and plan to leave at a certain time, and I'll 5 work the whole time that I'm there. So the work 6 expands, but it's not like I'm not working. And 7 if somebody asks me to do something over here 8 that's different, then I do something less over 9 there. 10 BY MR. KEYES: 11 Q. Under the application of Parkinson's 12 law, the chief may have taken eight hours to do 13 his work because he had eight hours available to 14 do it, so he was going to be on the job for 15 eight hours. 16 MR. SOBOL: Objection. Form. 17 BY MR. KEYES: 18 Q. Right? 19 A. I don't know about the "right." 20 Q. Well, correct? Do you agree with that 21 proposition? 22 MR. SOBOL: Objection to form. 23 A. I'm going to withhold agree or 24 disagree until you go on a little bit.</p>	<p>1 resources. It could be money, it could be time 2 or something over here, and there's stuff lost 3 because of that. It's why in my restaurant 4 example I didn't need to tell you what I didn't 5 buy in order to be confident that the cost of 6 fixing my car was \$75. Why didn't I need to 7 tell you that? Why -- and aren't their 8 hypotheticals that you could make up that would 9 interfere with that inference? But you just 10 don't need to do it in an economic opportunity 11 cost approach. It comes out of something. 12 It's -- some other activities are there, and 13 there's a cost. 14 BY MR. KEYES: 15 Q. Or it could come out of leisure. It 16 doesn't necessarily come out of other work, 17 right? 18 MR. SOBOL: Objection. 19 A. You're trying to get -- to avoid the 20 opportunity cost approach. It's not the way 21 opportunity cost is thought about in economics. 22 BY MR. KEYES: 23 Q. No, sir. I understand from economics 24 that everything has an opportunity cost,</p>
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<p>1 BY MR. KEYES: 2 Q. Well, under the application of 3 Parkinson's law, if it holds true, the chief may 4 have taken eight hours to do the work just 5 because he was going to be on the job for eight 6 hours, not because he actually needed eight 7 hours to get all that work done. 8 MR. SOBOL: Objection. 9 Is there a question before him? 10 BY MR. KEYES: 11 Q. I asked you before, do you agree with 12 that statement? 13 A. I don't agree with that statement. 14 Q. And you can't rule out that if the 15 chief were only given seven hours to do his work 16 he could get it done in seven hours? 17 MR. SOBOL: Objection. 18 Is there a question. 19 BY MR. KEYES: 20 Q. Correct? 21 MR. SOBOL: Objection. 22 A. This is an improper economic 23 application of the concept of opportunity cost. 24 The basic idea of opportunity cost is you devote</p>	<p>1 literally everything, right, because when you 2 make one choice, you're by definition not 3 choosing other things. I'm not debating whether 4 it has an opportunity cost. 5 I am trying to get you to answer my 6 question whether that opportunity cost can be 7 someone's leisure time or someone's downtime, or 8 it can be excess capacity, it doesn't mean that 9 other work necessarily doesn't get done. And 10 you seem to be wrestling with that proposition 11 suggesting that, no, the opportunity cost is 12 that other work necessarily does not get done, 13 and I'm trying to understand why you're 14 wrestling with that. 15 A. I think you said that backwards, but I 16 know what you're getting at. 17 Because it's not the conventional 18 application of the economics of opportunity 19 cost, which is a very time-honored approach to 20 asking the cost of things, as in my car example 21 and the restaurant example. There's an 22 opportunity cost to that money, there's an 23 opportunity cost to the time, and that tells me 24 what I need to know.</p>

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<p>1 Q. Okay. So in my hypothetical where it</p> <p>2 doesn't take the chief eight hours to do his</p> <p>3 non-opioid-related work and he has at least an</p> <p>4 hour of downtime or leisure time, if he is then</p> <p>5 asked to spend an hour on opioid-related work,</p> <p>6 the opportunity cost is giving up that leisure</p> <p>7 or downtime?</p> <p>8 MR. SOBOL: Objection.</p> <p>9 A. That's not the way I would approach it</p> <p>10 as an economist, which is my approach is</p> <p>11 grounded in the idea of opportunity cost. When</p> <p>12 I spend \$75 on my car, I don't need to be</p> <p>13 quizzed about where that \$75 comes from.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. Are you just as productive every</p> <p>16 single day, or are there some days when you're</p> <p>17 more productive and some days when you're less</p> <p>18 productive?</p> <p>19 MR. SOBOL: Objection. Scope.</p> <p>20 A. That's a subjective thing, but I</p> <p>21 sometimes feel more or less productive.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. And so in the same block of time,</p> <p>24 sometimes you get more done and sometimes you</p>	<p>1 Q. Is that right?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 A. You went very general right at the end</p> <p>4 of that question. With respect to?</p> <p>5 BY MR. KEYES:</p> <p>6 Q. With respect to what people are giving</p> <p>7 up when they spend their time on one activity</p> <p>8 versus the other. If you don't want to talk to</p> <p>9 the chief in my hypothetical or your</p> <p>10 hypothetical, then I take it you don't want to</p> <p>11 talk to any of the employees of Summit County or</p> <p>12 Cuyahoga County.</p> <p>13 A. No, I do.</p> <p>14 MR. SOBOL: Wait a second. Objection.</p> <p>15 MR. KEYES: Okay.</p> <p>16 MR. SOBOL: I don't understand the</p> <p>17 question.</p> <p>18 A. I'm also a bit lost.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. Okay. I asked in the hypothetical --</p> <p>21 take your hypothetical or my hypothetical. We</p> <p>22 have a disagreement over whether the chief</p> <p>23 actually needs all eight hours, whether the</p> <p>24 chief could get the same amount of work done in</p>
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<p>1 get less done?</p> <p>2 A. Yeah, broadly speaking, of course,</p> <p>3 these days one does more than one thing in the</p> <p>4 same block of time.</p> <p>5 Q. Have you studied -- in order to</p> <p>6 evaluate whether this hypothetical of the chief</p> <p>7 is accurate, you'd need to go talk to the chief</p> <p>8 more and say, how much time do you spend, are</p> <p>9 you working productively, are you working</p> <p>10 efficiently, do you have downtime, in order to</p> <p>11 resolve this debate we're having about whether</p> <p>12 working on opioid-related activities takes away</p> <p>13 from non-opioid-related activities?</p> <p>14 A. No, I wouldn't need to do that.</p> <p>15 Q. You wouldn't need to do that.</p> <p>16 And so in this case, not in the</p> <p>17 hypothetical, in order to determine what people</p> <p>18 are giving up in terms of the activities they're</p> <p>19 spending during the day, you wouldn't talk to</p> <p>20 any employees of Summit County or any employees</p> <p>21 of Cuyahoga County?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 Is there a question?</p> <p>24 BY MR. KEYES:</p>	<p>1 less time, whether working on opioid-related</p> <p>2 activities would take away from</p> <p>3 non-opioid-related activities. You said that's</p> <p>4 not a realistic hypothetical. I say it is a</p> <p>5 realistic hypothetical.</p> <p>6 In that hypothetical we could go talk</p> <p>7 to the chief to figure out whether the chief</p> <p>8 does have leisure time, whether the chief does</p> <p>9 have downtime, whether the chief is working</p> <p>10 efficiently, correct?</p> <p>11 MR. SOBOL: Objection.</p> <p>12 Don't answer the question.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. We could do that?</p> <p>15 MR. SOBOL: Objection. I instruct him</p> <p>16 not to answer. I have no idea what you asked</p> <p>17 him. You just talked for eight lines and then</p> <p>18 are asking the word "correct." Makes no sense.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. We could go talk to the chief to learn</p> <p>21 more about how the chief spends his time,</p> <p>22 correct?</p> <p>23 MR. SOBOL: Objection. Objection.</p> <p>24 Who is "we"?</p>

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<p style="text-align: right;">Page 250</p> <p>1 MR. KEYES: The professor and I as we</p> <p>2 debate our hypothetical.</p> <p>3 A. Our team.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. So it is -- we could do that. You</p> <p>6 can't disagree. Now, you may choose not to do</p> <p>7 it, and I asked would you, and you said no, so</p> <p>8 now I'm moving from the hypothetical to the</p> <p>9 facts of this case.</p> <p>10 A. Okay.</p> <p>11 Q. Is it the case, then, that you see no</p> <p>12 need to talk to the employees of Summit County</p> <p>13 or Cuyahoga County to figure out how they're</p> <p>14 actually spending their time and whether they</p> <p>15 have excess time that could be spent on</p> <p>16 opioid-related activities?</p> <p>17 MR. SOBOL: Objection. Asked and</p> <p>18 answered.</p> <p>19 A. I think our disagreement is more</p> <p>20 fundamental. It's about whether the economic</p> <p>21 concept of opportunity cost is the right way to</p> <p>22 go here, which I assume it is, as I state in my</p> <p>23 report. And once I make a determination that</p> <p>24 opportunity cost is the way to go, then I'm able</p>	<p style="text-align: right;">Page 252</p> <p>1 report.</p> <p>2 A. Okay. So...</p> <p>3 Q. Using excess capacity as defined in</p> <p>4 your report, did you interview -- did you study</p> <p>5 whether the personnel of any of the affected</p> <p>6 divisions had excess capacity?</p> <p>7 MR. SOBOL: Objection.</p> <p>8 A. I discussed excess capacity in my</p> <p>9 report, for the purpose of explaining why the</p> <p>10 presence of excess capacity does not imply that</p> <p>11 the opportunity cost concept here doesn't work.</p> <p>12 It does work.</p> <p>13 And as I said a few minutes ago when</p> <p>14 we started on this discussion, especially for</p> <p>15 public safety, there's excess capacity in a</p> <p>16 sense sometimes when people aren't fully busy,</p> <p>17 but that's not inefficient. We have to have</p> <p>18 that.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. Have you studied whether any of the</p> <p>21 personnel for any of the affected divisions had</p> <p>22 excess capacity?</p> <p>23 MR. SOBOL: Objection. Asked and</p> <p>24 answered.</p>
<p style="text-align: right;">Page 251</p> <p>1 to identify what the opportunity cost of a</p> <p>2 resource is in terms of dollars or in terms of</p> <p>3 time by saying this resource is less available</p> <p>4 to other things.</p> <p>5 And just to -- if I were to try to</p> <p>6 convince a fact-finder about this, I think the</p> <p>7 analogy to consumers is extremely appropriate,</p> <p>8 that we don't ask individuals what would you</p> <p>9 have done with that \$75 and expect an answer</p> <p>10 that is -- that you approve of to say that they</p> <p>11 spent it efficiently, or that they had leisure</p> <p>12 time and they could have worked more and made</p> <p>13 the \$75. We don't do that. And the reason we</p> <p>14 don't do it is because the idea of opportunity</p> <p>15 cost as it comes out of them either in terms of</p> <p>16 money or time, and that's a good solid economic</p> <p>17 measure of what the value of the resource is.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. Have you studied whether the personnel</p> <p>20 of any of the affected divisions had excess</p> <p>21 capacity?</p> <p>22 A. I'm going to ask you to define "excess</p> <p>23 capacity."</p> <p>24 Q. You talk about excess capacity in your</p>	<p style="text-align: right;">Page 253</p> <p>1 A. This wasn't necessary for me to be</p> <p>2 able to do my -- to apply my opportunity cost</p> <p>3 analysis.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. So you didn't study it, correct?</p> <p>6 MR. SOBOL: Objection. Asked and</p> <p>7 answered.</p> <p>8 A. It wasn't necessary that I study it.</p> <p>9 BY MR. KEYES:</p> <p>10 Q. Whether it's necessary or not, did you</p> <p>11 study it?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 That's the fourth time, maybe the</p> <p>14 third, but certainly more than two.</p> <p>15 A. I just want to be clear about the role</p> <p>16 of excess capacity, and why if the logic I'm</p> <p>17 applying to it is correct, which I believe it</p> <p>18 is, then I don't need to be able to make a</p> <p>19 judgment about the EMS personnel and how much</p> <p>20 time they sit around the fire station, and is</p> <p>21 that excess capacity or is that appropriate</p> <p>22 capacity to be able to respond to stochastic</p> <p>23 healthcare events.</p> <p>24 BY MR. KEYES:</p>

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<p style="text-align: right;">Page 254</p> <p>1 Q. Do you believe that there is such a</p> <p>2 thing as optimal excess capacity where you have</p> <p>3 just enough, but not too much?</p> <p>4 A. If you're able to write down a problem</p> <p>5 sort of completely, then there are ways to</p> <p>6 characterize what optimal capacity would mean</p> <p>7 in, for example, say, a bridge or something like</p> <p>8 that.</p> <p>9 Q. Do you believe that there is such a</p> <p>10 thing as efficient excess capacity and such a</p> <p>11 thing as inefficient excess capacity?</p> <p>12 A. Well, these things would be connected,</p> <p>13 the concepts you're asking about. If there's an</p> <p>14 optimal excess capacity that's a certain level</p> <p>15 of excess capacity, one could call that the</p> <p>16 efficient level of excess capacity. You might</p> <p>17 be a little more generous with respect to your</p> <p>18 application depending on what the context is and</p> <p>19 say there's kind of a range of things we would</p> <p>20 regard to be efficient in this context, and then</p> <p>21 you might be able to sometimes determine if</p> <p>22 there's inefficient excess capacity.</p> <p>23 Q. Did you study whether any of the</p> <p>24 personnel of any of the affected divisions had</p>	<p style="text-align: right;">Page 256</p> <p>1 Q. Did you study whether any of the</p> <p>2 affected divisions was short-staffed because of</p> <p>3 opioid-related needs and, therefore, couldn't</p> <p>4 respond to an emergency?</p> <p>5 MR. SOBOL: Objection.</p> <p>6 A. There is evidence in the record for</p> <p>7 that effect of -- by short-staffing, for</p> <p>8 example, I mean, police who would have been</p> <p>9 forced to work on opioid-related activities and</p> <p>10 could not continue to do some things they'd done</p> <p>11 previously.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. Anything else?</p> <p>14 A. I think it's true in family services,</p> <p>15 in the medical examiner office. They weren't</p> <p>16 able to continue to take contracted work from</p> <p>17 outside the county. There may be other</p> <p>18 examples.</p> <p>19 Q. My question was, did you study whether</p> <p>20 any of the affected divisions was short-staffed</p> <p>21 because of opioid-related needs and, therefore,</p> <p>22 couldn't respond to an emergency?</p> <p>23 A. Oh, an emergency.</p> <p>24 Q. Did you study that?</p>
<p style="text-align: right;">Page 255</p> <p>1 suboptimal or inefficient excess capacity?</p> <p>2 A. Well, this -- as I answered a few</p> <p>3 minutes ago, this is not something I need to do</p> <p>4 to be able to apply the concept of opportunity</p> <p>5 cost.</p> <p>6 Q. So you didn't do it?</p> <p>7 MR. SOBOL: Objection.</p> <p>8 A. I didn't need to know what I would</p> <p>9 have spent with that \$75 to be able to answer</p> <p>10 that it cost me \$75 to fix the car.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. Does every municipal government</p> <p>13 division need excess capacity?</p> <p>14 A. I think probably in some sense yes,</p> <p>15 but it would vary according to the division.</p> <p>16 Q. So you would expect that every</p> <p>17 municipal government division did have excess</p> <p>18 capacity?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 A. In the sense that I answered a few</p> <p>21 minutes just this previous question, it would be</p> <p>22 a yes, without any implication that excess</p> <p>23 capacity was inefficient.</p> <p>24 BY MR. KEYES:</p>	<p style="text-align: right;">Page 257</p> <p>1 A. I think in many cases crime is an</p> <p>2 emergency, so short-staffing of police probably</p> <p>3 would fit there.</p> <p>4 Q. Anything else?</p> <p>5 A. Nothing that comes to mind.</p> <p>6 Q. Okay. And what evidence can you point</p> <p>7 to in this record that there was short-staffing</p> <p>8 of the police such that the police could not</p> <p>9 respond to emergencies?</p> <p>10 A. Well, I would say there's two types of</p> <p>11 evidence. One is the lessened ability of police</p> <p>12 to respond to emergencies that just logically</p> <p>13 follows from the fact that police have fewer</p> <p>14 hours that are not devoted to opioids. So it</p> <p>15 seems clear that if, say, 20 percent of police</p> <p>16 time is devoted to opioids over here, then</p> <p>17 there's a smaller amount of police time that is</p> <p>18 available to respond to emergencies with respect</p> <p>19 to other public safety issues. And there's some</p> <p>20 specific testimony in the record also about</p> <p>21 activities the police had done before, and with</p> <p>22 opioids now they're not able to do.</p> <p>23 Q. Well, you gave an example that said if</p> <p>24 you're spending, say, 20 percent of police time</p>

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<p style="text-align: right;">Page 258</p> <p>1 devoted to opioids over here, then there's a</p> <p>2 smaller amount of police time that is available</p> <p>3 to respond to emergencies, so that would draw</p> <p>4 down on any excess capacity.</p> <p>5 My question is, are you aware of any</p> <p>6 evidence that the police of either county were</p> <p>7 short-staffed such that they could not respond</p> <p>8 to any emergencies?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 A. Could not respond. They could</p> <p>11 certainly respond less quickly and less well.</p> <p>12 Was it impossible? I don't know.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Are you aware of any evidence that the</p> <p>15 police of either Summit County or Cuyahoga</p> <p>16 County were short-staffed such that they did not</p> <p>17 respond to any emergencies?</p> <p>18 A. Well, again, here there's two forms of</p> <p>19 evidence. The first one is my inference from</p> <p>20 the less time police would have to respond to</p> <p>21 other non-opioid emergencies. It seems obvious</p> <p>22 to me that they would be less able to respond to</p> <p>23 those kind of emergencies.</p> <p>24 And there's also evidence in the</p>	<p style="text-align: right;">Page 260</p> <p>1 I'm not sure why you would not agree with that.</p> <p>2 And the other is kind of anecdotes of local</p> <p>3 officials that specifically mention homicides</p> <p>4 and rapes that would go uninvestigated because</p> <p>5 police are diverted into opioids.</p> <p>6 Q. You cite in your report "the well</p> <p>7 accepted analogy between government and consumer</p> <p>8 decision-making with respect to resource</p> <p>9 allocation."</p> <p>10 Do you recall that?</p> <p>11 A. I do. If you wouldn't mind --</p> <p>12 Q. It's on Page 14 of your report.</p> <p>13 A. -- telling me the page.</p> <p>14 Q. Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. And in your discussion you cite</p> <p>17 Professor Gruber and Professor Rosen and</p> <p>18 Professor Mikesell?</p> <p>19 A. Yes.</p> <p>20 Q. And so when you refer to them, do you</p> <p>21 consider them to be knowledgeable about this</p> <p>22 analogy and whether this analogy holds?</p> <p>23 A. I do, yes.</p> <p>24 Q. Do you consider them to be</p>
<p style="text-align: right;">Page 259</p> <p>1 record of -- I'm not sure what official was</p> <p>2 saying this -- of how police were diverted to</p> <p>3 opioids and could not respond to homicides and</p> <p>4 rapes, which I consider to be emergencies.</p> <p>5 Q. And whose testimony are you referring</p> <p>6 to there?</p> <p>7 A. See, I don't -- I know I read it. I</p> <p>8 don't know if I cite it or it's in the</p> <p>9 depositions that I read or what exactly.</p> <p>10 Q. You cited that deposition testimony</p> <p>11 and then you cited the inference. But you're</p> <p>12 making an assumption that the excess capacity</p> <p>13 was so drawn down that they were so</p> <p>14 short-staffed that, in fact, they did not</p> <p>15 respond to any emergencies, but you can't point</p> <p>16 to any emergencies they did not respond to,</p> <p>17 right?</p> <p>18 MR. SOBOL: Objection.</p> <p>19 Which question?</p> <p>20 BY MR. KEYES:</p> <p>21 Q. You can answer.</p> <p>22 A. Well, there was two aspects of support</p> <p>23 I mention with respect to the inference. One is</p> <p>24 the less time being available, which seems --</p>	<p style="text-align: right;">Page 261</p> <p>1 authoritative about this analogy and whether</p> <p>2 this analogy holds?</p> <p>3 A. I do, yes.</p> <p>4 Q. On Page 15 you say "Government" --</p> <p>5 this is at the top of the page, "Governments</p> <p>6 maximize the welfare of their constituents when</p> <p>7 resources are allocated to their most highly</p> <p>8 valued use, leading to a budgetary allocation in</p> <p>9 which the social value of an additional dollar</p> <p>10 is equal across services."</p> <p>11 Do you see that?</p> <p>12 A. Yes, I see it.</p> <p>13 Q. And you say "Governments maximize,"</p> <p>14 not governments can maximize. You say</p> <p>15 "Governments maximize." So you're positing that</p> <p>16 governments in practice maximize the welfare of</p> <p>17 their constituents when they allocate resources</p> <p>18 to their most highly valued use, right?</p> <p>19 A. Well, this is in the context of the</p> <p>20 analogy you mentioned a moment ago between</p> <p>21 government behavior and consumer behavior, and</p> <p>22 what do we say about consumers when we regard</p> <p>23 how we approach the question of how consumers</p> <p>24 behave? We say they maximize utility, which</p>

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<p style="text-align: right;">Page 262</p> <p>1 means they make choices on their own behalf that</p> <p>2 are in their own best interest as they see it.</p> <p>3 Q. Where consumer is the solitary single</p> <p>4 decision-maker of his or her own welfare,</p> <p>5 correct?</p> <p>6 A. Not always, but sometimes. That's the</p> <p>7 accepted model of consumer behavior, and we're</p> <p>8 talking here about the analogy between the model</p> <p>9 of consumer behavior and the model of government</p> <p>10 behavior, and that's the analogy.</p> <p>11 The analogous approach to government</p> <p>12 would be they have a kind of budget, they have</p> <p>13 alternative uses for that budget, and they use</p> <p>14 that budget in order to maximize, which is</p> <p>15 really the same nature of assumption as you are</p> <p>16 getting involved in when you say consumers</p> <p>17 maximize the value of the budget, which has the</p> <p>18 implication that the resources at the margin are</p> <p>19 -- held the same value.</p> <p>20 Q. Did you study if Summit County and</p> <p>21 Cuyahoga County governments allocated their</p> <p>22 resources to the most highly valued use when</p> <p>23 they allocated their budget dollars?</p> <p>24 MR. SOBOL: Objection.</p>	<p style="text-align: right;">Page 264</p> <p>1 maximize their welfare and allocating them to</p> <p>2 the most highly valued use? Did you do any kind</p> <p>3 of study here as to Summit County and Cuyahoga</p> <p>4 County?</p> <p>5 MR. SOBOL: Objection. Asked and</p> <p>6 answered twice before.</p> <p>7 A. The purpose of this section is to lay</p> <p>8 out the economic approach to understanding that</p> <p>9 resource allocation.</p> <p>10 And the direct answer to your question</p> <p>11 here, and I'm going to rely on the analogy to</p> <p>12 consumers again, so the \$75 which I've been fond</p> <p>13 of talking about as the cost to the consumer of</p> <p>14 fixing their car, do I have to assume that that</p> <p>15 consumer is maximizing utility in where they</p> <p>16 took that money from in order for you or some</p> <p>17 other reasonable person to conclude that \$75 is</p> <p>18 what the cost to them of fixing the car is?</p> <p>19 Kind of. I mean, you need to have a conception</p> <p>20 that consumers are doing something in their</p> <p>21 self-interest.</p> <p>22 And the same -- exactly the same</p> <p>23 analogy is true for the governments here.</p> <p>24 They're spending their resources, the time of</p>
<p style="text-align: right;">Page 263</p> <p>1 A. This is why I included this material</p> <p>2 right here, so the reader would understand the</p> <p>3 economic approach that I'm applying to resource</p> <p>4 allocation, which is a conventional economic</p> <p>5 approach that has analogies to consumer behavior</p> <p>6 and that underlies the idea of opportunity cost.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. Did you study if Summit County and</p> <p>9 Cuyahoga County governments allocated their</p> <p>10 resources to the most highly valued use when</p> <p>11 they allocated their budget dollars?</p> <p>12 MR. SOBOL: Objection. Asked and</p> <p>13 answered.</p> <p>14 A. Using this approach to government</p> <p>15 behavior, the application to any particular</p> <p>16 government is that yes, they are doing that.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. But that's an ipse dixit. I posit a</p> <p>19 theory, therefore it must hold true here.</p> <p>20 I'm asking you, did you study, did you</p> <p>21 conduct any investigation of facts and gather</p> <p>22 empirical evidence to confirm that the theory</p> <p>23 holds true here such that Summit County and</p> <p>24 Cuyahoga County allocated their resources to</p>	<p style="text-align: right;">Page 265</p> <p>1 their personnel on something, within an economic</p> <p>2 framework in which opportunity cost is the</p> <p>3 appropriate way to judge the value of resources.</p> <p>4 It's not necessary for me to make an assessment</p> <p>5 of whether you are maximizing utility at the</p> <p>6 time you spend \$75 to fix your car, and it's not</p> <p>7 necessary for me to make an investigation of the</p> <p>8 optimal resource allocation that governments are</p> <p>9 deciding about in the context of -- we're</p> <p>10 talking about here today.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. I asked a yes-or-no question. Did you</p> <p>13 study if Summit County and Cuyahoga County</p> <p>14 governments allocated their resources to the</p> <p>15 most highly valued use when they allocated their</p> <p>16 budget dollars? Yes, they did, or no, they</p> <p>17 didn't?</p> <p>18 MR. SOBOL: Or you can't answer the</p> <p>19 question.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. Yes, you studied, no, I didn't study</p> <p>22 it, and then if you didn't study it you can tell</p> <p>23 me why you think it was unnecessary. But did</p> <p>24 you study it?</p>

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<p style="text-align: right;">Page 266</p> <p>1 MR. SOBOL: Object to the form. I'm</p> <p>2 not sure which question you're asking him.</p> <p>3 And if you can't answer the question</p> <p>4 yes or no, he's not required to. Asked and</p> <p>5 answered, also, four times.</p> <p>6 BY MR. KEYES:</p> <p>7 Q. Is that a question you can't answer,</p> <p>8 did you study it or not?</p> <p>9 MR. SOBOL: Well, now I don't know</p> <p>10 what question you're asking. Are you pressing</p> <p>11 the one before? Are you withdrawing that and</p> <p>12 asking a new one?</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Go ahead.</p> <p>15 MR. SOBOL: Go ahead what?</p> <p>16 BY MR. KEYES:</p> <p>17 Q. Answer the question I just posed.</p> <p>18 MR. SOBOL: You just posed four of</p> <p>19 them.</p> <p>20 MR. KEYES: You can do your best to</p> <p>21 interfere. We're going to just keep going</p> <p>22 through it.</p> <p>23 MR. SOBOL: I know. I'm just trying</p> <p>24 to get -- have a clear question and answer.</p>	<p style="text-align: right;">Page 268</p> <p>1 allocated to a particular use the opportunity</p> <p>2 cost of those resources elsewhere. That's</p> <p>3 mainstream economics, application of opportunity</p> <p>4 cost. Economists do it all the time in consumer</p> <p>5 and other areas. That's what it is.</p> <p>6 BY MR. KEYES:</p> <p>7 Q. Did you study whether efficiency drove</p> <p>8 the Cuyahoga County or Summit County government</p> <p>9 decision-making in their budget process?</p> <p>10 MR. SOBOL: Objection. Asked and</p> <p>11 answered.</p> <p>12 A. It's a slightly different form of the</p> <p>13 same question, as I interpret it. And the</p> <p>14 nature of my study is to identify the</p> <p>15 appropriate economic framework for inferring the</p> <p>16 value of resources in alternative uses in the</p> <p>17 context of reallocation of resources to the</p> <p>18 opioid crisis, and just -- excuse me -- that's</p> <p>19 the opportunity cost approach, it's mainstream</p> <p>20 economics, and that's exactly what I do here.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. Did you study the impact of other</p> <p>23 factors on the Cuyahoga County and Summit County</p> <p>24 government budget setting?</p>
<p style="text-align: right;">Page 267</p> <p>1 Maybe ask a new question.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. My question is, did you study whether</p> <p>4 the Cuyahoga County or Summit County governments</p> <p>5 allocated their resources to the most highly</p> <p>6 valued use when they allocated their budget</p> <p>7 dollars? Yes or no.</p> <p>8 MR. SOBOL: Objection. Asked and</p> <p>9 answered three times.</p> <p>10 If you cannot answer the question yes</p> <p>11 or no, answer the question truthfully.</p> <p>12 A. I don't feel like I can answer that</p> <p>13 question yes or no.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. Okay. Did you study whether --</p> <p>16 MR. SOBOL: Well, you've interrupted</p> <p>17 him.</p> <p>18 A. There is an important sense in which I</p> <p>19 studied this, which is to consider the</p> <p>20 appropriate economic framework for understanding</p> <p>21 local government behavior, relying on the</p> <p>22 analogy to consumer behavior, which I won't go</p> <p>23 through again but which you've heard, and using</p> <p>24 that to enable me to infer from resources</p>	<p style="text-align: right;">Page 269</p> <p>1 MR. SOBOL: Objection. Asked and</p> <p>2 answered.</p> <p>3 A. I'm not sure what you mean with this</p> <p>4 question.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. Well, you're positing without actually</p> <p>7 looking at the specifics of Cuyahoga County or</p> <p>8 Summit County that efficiency drove the budget</p> <p>9 process. And I'm asking, did you study the</p> <p>10 impact of other factors on the budget process</p> <p>11 that would explain why dollars were allocated</p> <p>12 the way they were in the budget?</p> <p>13 MR. SOBOL: Objection. Asked and</p> <p>14 answered.</p> <p>15 A. You know, I don't have a lot to add to</p> <p>16 what I've mentioned already, that within the</p> <p>17 conventional economic framework of government</p> <p>18 behavior, then identification of the resources</p> <p>19 devoted to a particular use is the measure of</p> <p>20 opportunity cost.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. Can you identify what factors other</p> <p>23 than efficiency might drive or influence the</p> <p>24 budget process for a municipality?</p>

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<p>1 A. The budget process? I'm sorry, what</p> <p>2 do you mean by "the budget process" here?</p> <p>3 Q. The process by which decisions are</p> <p>4 made as to how to allocate dollars in the</p> <p>5 budget.</p> <p>6 A. I think I discuss this a bit in my</p> <p>7 report. In some cases governments are</p> <p>8 constrained by inability to raise additional</p> <p>9 revenue. They might, if they're attempting to</p> <p>10 benefit the citizens, raise more revenue and</p> <p>11 spend even more than they're able to with their</p> <p>12 limited budget on some particular application.</p> <p>13 So there the other factor might be something</p> <p>14 that makes it difficult or even constrains a</p> <p>15 local government from raising revenue or</p> <p>16 borrowing funds, for example.</p> <p>17 Q. What if revenue cannot be increased</p> <p>18 such that the total amount of revenue is fixed,</p> <p>19 can you identify what factors besides efficiency</p> <p>20 may drive or influence how those dollars are</p> <p>21 allocated in the budget?</p> <p>22 A. Well, I have a framework for that,</p> <p>23 which is that the government is using funds in</p> <p>24 order to benefit the citizens, and that's -- I</p>	<p>1 Q. You keep saying the accepted approach.</p> <p>2 I'm not asking about theory. I'm asking about</p> <p>3 Summit County and Cuyahoga County.</p> <p>4 Did you study, for instance, the</p> <p>5 impact of lobbying or the influence of interest</p> <p>6 groups and how Summit County and Cuyahoga County</p> <p>7 allocated dollars in their budget?</p> <p>8 A. Well, that's an example of a factor</p> <p>9 that would be involved in expression of the</p> <p>10 interest of the citizens, and it may well</p> <p>11 influence the budget allocation, but it doesn't</p> <p>12 change the ability to use opportunity cost as a</p> <p>13 framework for assessing the impact of opioids.</p> <p>14 Q. Did you study the impact of corruption</p> <p>15 on the decision-making of the Summit County or</p> <p>16 Cuyahoga County government officials in</p> <p>17 allocating dollars in the budget?</p> <p>18 MR. SOBOL: Objection. Assumes a fact</p> <p>19 not in evidence.</p> <p>20 A. I don't know that there were -- that</p> <p>21 there was corruption. I'm going to stop there,</p> <p>22 see if you let me get away with that.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. You don't know because you didn't</p>
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<p>1 realize that's a general statement. Excuse me,</p> <p>2 one more sec. There are factors that would play</p> <p>3 into that which have to do with, say, changes in</p> <p>4 the population composition that may require more</p> <p>5 spending on public schools or some other</p> <p>6 government activity.</p> <p>7 Q. Did you study the influence of</p> <p>8 politics on how Summit County and Cuyahoga</p> <p>9 County allocated dollars in their budgets?</p> <p>10 A. What do you mean "in this case"? I</p> <p>11 know what politics is, but what do you mean</p> <p>12 here?</p> <p>13 Q. I mean political considerations. I</p> <p>14 mean appeasing certain groups, punishing other</p> <p>15 groups, maximizing chances of being</p> <p>16 re-elected --</p> <p>17 A. I realize --</p> <p>18 Q. -- any of those factors. Do you</p> <p>19 understand any of those factors?</p> <p>20 A. I realize that elected officials are</p> <p>21 human beings, but still the accepted economic</p> <p>22 approach to this is to regard these things as</p> <p>23 playing out in a way to -- so the funds are used</p> <p>24 for the benefit of the citizens.</p>	<p>1 study it, right? I mean, you didn't know</p> <p>2 because you didn't study it. My question wasn't</p> <p>3 whether there was. My question is, did you</p> <p>4 study it? Did you study whether corruption had</p> <p>5 any impact on the decision-making of Cuyahoga</p> <p>6 County or Summit County government officials</p> <p>7 when they were deciding how to allocate dollars</p> <p>8 in their budget?</p> <p>9 MR. SOBOL: Objection. Assumes a fact</p> <p>10 not in evidence.</p> <p>11 A. That would have been outside the scope</p> <p>12 of my report.</p> <p>13 MR. SOBOL: I could have said that,</p> <p>14 too, but I was leaving that to you.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. Are you aware of whether there have</p> <p>17 been issues of corruption in either Summit</p> <p>18 County or Cuyahoga County?</p> <p>19 A. I'm not aware.</p> <p>20 Q. Did you look into that at all? Did</p> <p>21 you ask the question, has there been a problem</p> <p>22 with corruption in Cuyahoga County or Summit</p> <p>23 County?</p> <p>24 MR. SOBOL: Objection.</p>

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<p>1 A. It wasn't part of my assignment.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. Did you do any research into whether</p> <p>4 there had been problems with political</p> <p>5 corruption in either Summit County or Cuyahoga</p> <p>6 County?</p> <p>7 MR. SOBOL: Objection.</p> <p>8 A. It wasn't part of my assignment.</p> <p>9 BY MR. KEYES:</p> <p>10 Q. Are you aware that there have been</p> <p>11 high-level Cuyahoga County officials who have</p> <p>12 been indicted?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 A. I'm not aware.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. Are you aware that some of them have</p> <p>17 pled guilty?</p> <p>18 MR. SOBOL: Objection.</p> <p>19 A. I'm also not aware of that.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. Are you aware that there are several</p> <p>22 Cuyahoga County officials who are currently</p> <p>23 indicted, who are being prosecuted for political</p> <p>24 corruption?</p>	<p>1 rather than him going on a while and you chiming</p> <p>2 in, questions --</p> <p>3 BY MR. KEYES:</p> <p>4 Q. I'm not going to table questions. You</p> <p>5 can answer or not, but --</p> <p>6 MR. SOBOL: How about you ask</p> <p>7 questions and you give answers.</p> <p>8 A. I'll be a better witness.</p> <p>9 I disagree.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. Okay. Why do you disagree?</p> <p>12 MR. SOBOL: Well, wait. I don't even</p> <p>13 know what's going on right now. I don't know</p> <p>14 that you're disagreeing or agreeing or whether</p> <p>15 it's supposed to be --</p> <p>16 MR. KEYES: Stop coaching him.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. Why do you disagree?</p> <p>19 MR. SOBOL: I'm not coaching him, but</p> <p>20 I am giving him instructions that he's not to be</p> <p>21 chiming in or having conversation. He has to</p> <p>22 ask questions, and you give an answer.</p> <p>23 THE WITNESS: My bad.</p> <p>24 BY MR. KEYES:</p>
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<p>1 A. I'm not aware of that.</p> <p>2 Can I ask my able assistant to get me</p> <p>3 some water?</p> <p>4 MR. SOBOL: Yes, you may. You can ask</p> <p>5 all you want. I'll have my assistant get your</p> <p>6 water for you.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. You say -- on Page 15 in Paragraph 24,</p> <p>9 you talk about what efficiency requires.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Again that's the theory, what</p> <p>13 efficiency requires?</p> <p>14 A. Yes.</p> <p>15 Q. But not something that you've studied</p> <p>16 with respect to Summit County or Cuyahoga County</p> <p>17 in this engagement, because you're sticking with</p> <p>18 the theory and you think the theory holds,</p> <p>19 right?</p> <p>20 A. I'm probably going to disagree with</p> <p>21 you, but why don't you go on a little bit and</p> <p>22 I'll chime in.</p> <p>23 Q. Well --</p> <p>24 MR. SOBOL: Well, how about this,</p>	<p>1 Q. Why do you disagree?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 To what?</p> <p>4 A. It's not solely a theoretical</p> <p>5 exercise. The increased demands that I'm</p> <p>6 referring to here are the opioid crisis.</p> <p>7 BY MR. KEYES:</p> <p>8 Q. Okay. You say "This reallocation of</p> <p>9 resources is the cost of providing Bellwether</p> <p>10 government services in response to the opioid</p> <p>11 crisis." Right?</p> <p>12 A. Yes, I say that.</p> <p>13 Q. Okay. What dollars were reallocated</p> <p>14 to the opioid crisis?</p> <p>15 A. The ones that are contained in my</p> <p>16 report.</p> <p>17 Q. Away from what?</p> <p>18 A. Away from other activities of the</p> <p>19 division.</p> <p>20 Q. What activities of the division?</p> <p>21 A. This is the opportunity cost question</p> <p>22 again. I don't need to know where that \$75</p> <p>23 comes from, and I don't need to know what</p> <p>24 exactly was done less.</p>

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<p>1 Q. Okay. So if I go through your tables</p> <p>2 and you point me to dollars that you say are the</p> <p>3 opportunity cost and are damages in your</p> <p>4 framework, and I ask you what would those</p> <p>5 dollars have been spent on if they weren't spent</p> <p>6 on the opioid crisis, are you going to tell me</p> <p>7 every time that you don't know and you don't</p> <p>8 need to know?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 A. I'm going to tell you that these</p> <p>11 dollars are a valid measure of opportunity cost.</p> <p>12 And if you ask me, well, what exactly,</p> <p>13 Professor McGuire? It came out of the budget</p> <p>14 available for other things, and I can't tell you</p> <p>15 what the mix of those things are, just like --</p> <p>16 just like if I spend \$75 fixing my car, what</p> <p>17 exactly did that come out of, Tom, when you</p> <p>18 spend that money? I may not even know, and it's</p> <p>19 not important for assessing the opportunity cost</p> <p>20 of that spending.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. For any affected division, did you</p> <p>23 attempt to determine what the dollars that you</p> <p>24 describe as damages would have been spent on if</p>	<p>1 MR. SOBOL: That was a part of the</p> <p>2 sentence?</p> <p>3 MR. KEYES: Yes, it's the part I'm</p> <p>4 asking the question about, yes.</p> <p>5 A. I do see that, yes.</p> <p>6 BY MR. KEYES:</p> <p>7 Q. Okay. And the resources that you say</p> <p>8 were shifted from alternative uses are the</p> <p>9 dollars that you have described as damages --</p> <p>10 MR. SOBOL: Objection.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. -- correct?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 A. Are measured by the dollars.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. And you say that those are resources</p> <p>17 that were shifted from alternative uses. What</p> <p>18 were the alternative uses that would have</p> <p>19 received those dollars but for the opioid</p> <p>20 epidemic and the defendants' conduct?</p> <p>21 A. It would have been a</p> <p>22 division-by-division question, and it would</p> <p>23 consist of the other activities of the division.</p> <p>24 Q. And are you able to tell me with any</p>
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<p>1 they weren't spent on opioid services?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 A. I do think I answered that question.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. You said it's not important for</p> <p>6 assessing the opportunity cost to that spending,</p> <p>7 so I'm asking, did you attempt to look at it?</p> <p>8 MR. SOBOL: Objection.</p> <p>9 A. I didn't need to in order to apply the</p> <p>10 opportunity cost framework.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. So you didn't?</p> <p>13 MR. SOBOL: Objection. Asked and</p> <p>14 answered.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. Go ahead, you can finish.</p> <p>17 A. Because I didn't need to.</p> <p>18 Q. You say on Page 18 of your report,</p> <p>19 Paragraph 30, you say, "the damage analysis</p> <p>20 presented in this report focuses on the value of</p> <p>21 resources that the Bellwether jurisdictions</p> <p>22 shifted from alternative uses to combat the</p> <p>23 opioid epidemic."</p> <p>24 Do you see that?</p>	<p>1 specifics what those are for any division?</p> <p>2 A. It does depend on the division.</p> <p>3 Q. Did you talk to anyone at Summit</p> <p>4 County or Cuyahoga County in any division about</p> <p>5 what they would have done with the dollars that</p> <p>6 you say were shifted away towards opioid-related</p> <p>7 services?</p> <p>8 A. This relates to what we spoke about</p> <p>9 earlier this morning and the question of</p> <p>10 diversion. And it's something that I was</p> <p>11 interested in from the get-go, and asked my</p> <p>12 staff to be on the lookout for evidence of</p> <p>13 diversion both in terms of their interviews and</p> <p>14 in terms of the record here, including the</p> <p>15 deposition. So in many of these contexts, yes,</p> <p>16 there was.</p> <p>17 Q. In the answer you just gave, you're</p> <p>18 talking about diversion of dollars, not</p> <p>19 diversion of opioids, correct?</p> <p>20 A. Yes, diversion of resources of the</p> <p>21 local government, not diversion of the drugs.</p> <p>22 Q. If you turn again to the last three</p> <p>23 tables in your report, these are the total</p> <p>24 damages that you attribute to the defendants'</p>

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<p style="text-align: right;">Page 282</p> <p>1 misconduct.</p> <p>2 A. Okay.</p> <p>3 Q. Have you calculated the total damages</p> <p>4 that you attribute to the defendants' misconduct</p> <p>5 that results from people using or abusing</p> <p>6 illicit opioids as distinct from prescription</p> <p>7 opioids?</p> <p>8 A. Yes, I think I understand the</p> <p>9 question.</p> <p>10 The inputs to my analysis in the form</p> <p>11 of Professor Cutler's share don't make that</p> <p>12 distinction, so in my work I don't calculate</p> <p>13 those separately, which is to say that I don't</p> <p>14 calculate the harms appearing either through the</p> <p>15 proximal cost of illicit or licit opioids.</p> <p>16 Q. You don't distinguish between illicit</p> <p>17 opioids and prescription opioids for purposes of</p> <p>18 your calculation of damages, right?</p> <p>19 A. In the sense of the production of</p> <p>20 these tables, the -- I use the share that David</p> <p>21 Cutler gives me, and that share is the share of,</p> <p>22 for example, opioid deaths that could be because</p> <p>23 of illicit or licit opioids that are</p> <p>24 attributable to the defendants' misconduct, and</p>	<p style="text-align: right;">Page 284</p> <p>1 from prescription opioids, either through</p> <p>2 affecting the person directly, through</p> <p>3 diversion, or through moving on to illicit</p> <p>4 drugs. It's all in one number.</p> <p>5 Q. So you do not offer calculations that</p> <p>6 distinguish between those two?</p> <p>7 A. I don't break it out into those</p> <p>8 categories.</p> <p>9 MR. KEYES: Okay. Why don't we take a</p> <p>10 ten-minute break.</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 3:21 p.m., and we're off the record.</p> <p>13 (Whereupon, a recess was taken.)</p> <p>14 THE VIDEOGRAPHER: The time is</p> <p>15 3:46 p.m., and we're on the record.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. Professor McGuire, I put in front of</p> <p>18 you a laptop, and on the laptop and on the</p> <p>19 various screens in the room is a copy of an</p> <p>20 Excel spreadsheet that was produced by Summit</p> <p>21 County. The Bates number of that Excel</p> <p>22 spreadsheet in native version is</p> <p>23 SUMMIT_001952976.</p> <p>24 Do you see that on your screen? Do</p>
<p style="text-align: right;">Page 283</p> <p>1 in that share of death are both.</p> <p>2 Q. You reference these tables. I should</p> <p>3 expand my question.</p> <p>4 Anywhere in your report do you offer</p> <p>5 calculations of damages that distinguish between</p> <p>6 damages arising from people's use or abuse of</p> <p>7 illicit opioids as distinct from people's use or</p> <p>8 abuse of prescription opioids?</p> <p>9 A. I believe this is where I do damages</p> <p>10 in my report, so it would be here, and that</p> <p>11 distinction is --</p> <p>12 Q. Is not here?</p> <p>13 A. -- not made here.</p> <p>14 Q. Similarly, anywhere in your report do</p> <p>15 you offer calculations of damages that</p> <p>16 distinguish between damages arising from people</p> <p>17 using prescription opioids that were prescribed</p> <p>18 to them versus damages arising from people using</p> <p>19 prescription opioids that were diverted and</p> <p>20 weren't prescribed to them?</p> <p>21 A. I understand the question.</p> <p>22 The similar answer, the numbers I'm</p> <p>23 provided by Professor Cutler are total numbers</p> <p>24 that include whatever route of harm there is</p>	<p style="text-align: right;">Page 285</p> <p>1 you see the Bates number at the top?</p> <p>2 A. At the top. Oh, yes, okay. I do.</p> <p>3 Q. Okay. And if you'd open your report</p> <p>4 to Page 35, at the top of Page 35 you say,</p> <p>5 "Expenditure data for Summit County were</p> <p>6 provided by the county government." You drop a</p> <p>7 footnote, footnote 83 --</p> <p>8 MR. SOBOL: I'm sorry, where? Okay.</p> <p>9 Go ahead, sorry.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. You drop a footnote. It's number 83,</p> <p>12 and it references SUMMIT_001952976.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. And that matches the Bates number of</p> <p>16 the Excel spreadsheet on your screen?</p> <p>17 A. Yes.</p> <p>18 Q. Earlier you said you couldn't recall</p> <p>19 the expenditure data and you didn't know what</p> <p>20 this Bates number referred to. Does this</p> <p>21 refresh your recollection?</p> <p>22 A. Yes.</p> <p>23 Q. So you said in your report that from</p> <p>24 these expenditure data, identify those costs</p>

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<p style="text-align: right;">Page 286</p> <p>1 that would be expected to vary in response to</p> <p>2 changes in the services provided by these</p> <p>3 divisions. Now that you have this expenditure</p> <p>4 data in front of you, can you walk me through</p> <p>5 how you identified what you've called affected</p> <p>6 costs and how you identified for affected costs</p> <p>7 whether they were overhead or non-overhead?</p> <p>8 MR. SOBOL: Objection.</p> <p>9 A. All right. This is the original</p> <p>10 document from Summit County?</p> <p>11 BY MR. KEYES:</p> <p>12 Q. Yes.</p> <p>13 A. Okay. There's a number of components</p> <p>14 to it. Just give me a second here to see what</p> <p>15 else you've got for me.</p> <p>16 And these charts, were they -- this is</p> <p>17 all Summit County stuff, not after it's been</p> <p>18 worked over by Compass Lex?</p> <p>19 Q. This is the document as it was</p> <p>20 produced in discovery, same Bates number as</p> <p>21 referenced in your report.</p> <p>22 A. Okay.</p> <p>23 Q. I take it Compass Lexecon worked it</p> <p>24 over at some point?</p>	<p style="text-align: right;">Page 288</p> <p>1 right now, can you walk me through for any</p> <p>2 particular account on this screen whether it's</p> <p>3 an affected cost or not and whether you classify</p> <p>4 it as overhead or not?</p> <p>5 A. Yeah. The ADM Board, which is what</p> <p>6 we're looking at now, is a little bit different</p> <p>7 than a regular division of one of the counties,</p> <p>8 that it receives funding from the county as well</p> <p>9 as from the state and the federal government, so</p> <p>10 that's kind of a special case.</p> <p>11 I prefer to talk about a more typical</p> <p>12 case.</p> <p>13 Q. Well, can you answer my question as to</p> <p>14 the ADM Board? If not, say so. We'll move to</p> <p>15 something else.</p> <p>16 A. All right, I'll go back to ADM.</p> <p>17 All right. So the allocation of costs</p> <p>18 of expenditures is not done in the revenue</p> <p>19 lines. So, for example, row 217, I suppose it</p> <p>20 is, is a revenue line.</p> <p>21 Q. How do you know that?</p> <p>22 A. Property taxes, revenue, pool budget.</p> <p>23 Q. By the name of the account?</p> <p>24 A. Yes, it could be a heading. So it's</p>
<p style="text-align: right;">Page 287</p> <p>1 MR. SOBOL: Objection.</p> <p>2 MR. KEYES: Why? It's the phrase he</p> <p>3 just used.</p> <p>4 MR. SOBOL: Well, because you asked</p> <p>5 one question, then you asked another question,</p> <p>6 so now it's compound. You didn't let him answer</p> <p>7 the first question.</p> <p>8 A. Okay.</p> <p>9 MR. SOBOL: See, I'm on top of it. I</p> <p>10 know what I'm doing sometimes.</p> <p>11 MR. KEYES: Actually that was only one</p> <p>12 question, but we'll let the record speak for</p> <p>13 itself. I think Mr. McGuire is still</p> <p>14 familiarizing himself with this spreadsheet.</p> <p>15 A. Yeah, making -- it's a very long</p> <p>16 spreadsheet. So let's take an example here.</p> <p>17 MR. SOBOL: Before you do, is it</p> <p>18 recorded what he's looking at, or -- it is,</p> <p>19 okay. Thank you.</p> <p>20 A. Okay. I'm just -- I'm just going down</p> <p>21 until I find what I think will be a good example</p> <p>22 to talk about. Maybe the mental health board.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. If we take the -- what's on the screen</p>	<p style="text-align: right;">Page 289</p> <p>1 historical revenues and expenditures through</p> <p>2 lines 12, yeah, by the name. These are revenue</p> <p>3 categories.</p> <p>4 Q. Okay.</p> <p>5 A. They may become relevant here, but</p> <p>6 it's not in the allocation that you asked me</p> <p>7 about, which is the designation of fixed and</p> <p>8 variable. Okay. So...</p> <p>9 Q. You're scrolling through a whole bunch</p> <p>10 of what appear to be expenses, correct?</p> <p>11 A. These are expense categories.</p> <p>12 Q. Right.</p> <p>13 A. I'm just trying to get a general feel</p> <p>14 for what these categories are before I go back</p> <p>15 and answer your question.</p> <p>16 Okay. So there's a lot of categories</p> <p>17 here. So we've got some -- these are some</p> <p>18 summaries, I think. All right. We're not going</p> <p>19 to go with the dog kennel, forget dog kennel.</p> <p>20 All right. Let me start with account</p> <p>21 type, 77, where I'm in row --</p> <p>22 Q. 373?</p> <p>23 A. -- 373. And these would be the form</p> <p>24 of expenditures that would be in the fixed</p>

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<p>1 category.</p> <p>2 Q. You say "these," referring to what?</p> <p>3 A. 373.</p> <p>4 Q. Okay. How do you know that?</p> <p>5 A. This is my recollection. I'm going to</p> <p>6 be --</p> <p>7 Q. It's your recollection of the</p> <p>8 treatment you gave it?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. But when you were first</p> <p>11 deciding what treatment to give it, how did you</p> <p>12 know what bucket to put it in?</p> <p>13 A. Well, this was the process we</p> <p>14 discussed earlier. Some of these will be, I</p> <p>15 think, best regarded as fixed, things like</p> <p>16 building rental, that kind of -- it's a pretty</p> <p>17 big expense category. That would always be in</p> <p>18 the fixed category. I'm not going to be</p> <p>19 100 percent. If you go back to whatever was</p> <p>20 produced for you and say, well, I'm</p> <p>21 Professor McGuire, you got that one wrong or</p> <p>22 that one wrong, I will get things wrong. But</p> <p>23 what I can tell you here is looking at these to</p> <p>24 give you a sense of how it was done and what</p>	<p>1 that, you know, it wasn't an operation that,</p> <p>2 okay, Professor McGuire, you have a few minutes</p> <p>3 now, take a look at this spreadsheet that I</p> <p>4 haven't seen for months and tell me which goes</p> <p>5 into which category. It was a more extended, I</p> <p>6 would say, thoughtful and in some case</p> <p>7 team-based decision about where some of these</p> <p>8 things would go. So I'll do the best I can</p> <p>9 sitting here today.</p> <p>10 Would it be helpful, then, for me to</p> <p>11 keep going in these account types? I'm not sure</p> <p>12 whether I'm helping you or not.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Well, I'd like to understand, now that</p> <p>15 you've seen the document -- before you said you</p> <p>16 didn't remember what that Bates number referred</p> <p>17 to. Now that you've seen the document and you</p> <p>18 see the way it's laid out, explain to me how you</p> <p>19 could make a determination for each account</p> <p>20 based just on the account title, or whether</p> <p>21 there are specific accounts you can identify</p> <p>22 that would require more homework, discussion</p> <p>23 among your team at Compass Lexecon and then</p> <p>24 obviously following up with someone at county</p>
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<p>1 some of the allocation decisions were made.</p> <p>2 Q. Why would you get it wrong if we went</p> <p>3 through line by line right now?</p> <p>4 A. Well, I just don't guarantee with</p> <p>5 going through 100 categories here. Then it's</p> <p>6 kind of a memory test which I won't get</p> <p>7 100 percent on.</p> <p>8 Q. But I thought you said that there were</p> <p>9 a number of categories where you've looked at</p> <p>10 the account title, you could use your judgment,</p> <p>11 and you were very confident you didn't need any</p> <p>12 discussion, you didn't need to follow up with</p> <p>13 anyone at Summit County, right?</p> <p>14 MR. SOBOL: Objection.</p> <p>15 A. Well, I remember that discussion, yes.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. So if it's so clear, then why would</p> <p>18 you get it one way when you did it before and</p> <p>19 get it a different way now?</p> <p>20 MR. SOBOL: Objection. Misstates his</p> <p>21 testimony.</p> <p>22 A. I'll get some right. I'm not saying I</p> <p>23 won't get many, but I'm only saying I won't get</p> <p>24 100 percent right. And the reason being is</p>	<p>1 personnel who can explain what these accounts</p> <p>2 even cover.</p> <p>3 MR. SOBOL: Objection.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. So I'm not trying to quiz you about</p> <p>6 any particular line.</p> <p>7 A. I understand.</p> <p>8 Q. I'm trying to understand the process.</p> <p>9 A. All right. I think I understand.</p> <p>10 The process is something similar to</p> <p>11 what we're doing now in which I examine these</p> <p>12 budget documents, some of which were in Excel,</p> <p>13 some of which were hard copies, and made a</p> <p>14 judgment about where some of these things would</p> <p>15 go, and then, you know, worked with my team and</p> <p>16 gathered further information and made a final</p> <p>17 decision.</p> <p>18 Q. I know you've said before that you</p> <p>19 used your judgment. Well, what criteria are you</p> <p>20 using? Is it an objective process, or is it</p> <p>21 subjective where you reach the best you can</p> <p>22 based on a conversation with your colleagues?</p> <p>23 MR. SOBOL: Objection.</p> <p>24 A. Well, I think it's a reasonable</p>

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<p>1 process. Publications, fixed. Equipment, 2 fixed. Data processing, fixed. Research 3 project equipment, fixed. Anything like 4 miscellaneous, I'm not going to throw it into 5 the variable category. 6 BY MR. KEYES: 7 Q. Could you go to Children and Family 8 Services, then, within this document? 9 A. Give me a row there. 10 Q. I don't have a row. Can you find it 11 using this document? 12 A. Oh, gosh. This is a very long 13 document. 14 Does anybody know the answer here in 15 the room? Give me a hint. 16 MR. SOBOL: Why don't you "control F 17 family" and see if that helps. 18 THE WITNESS: I'm not so good at these 19 sort of things, Tom. 20 MR. PENDELL: Take your time. 21 A. Okay. I got it. 22 MR. SOBOL: Even I want this to move 23 along. 24 A. "Casey family expenditures."</p>	<p>1 native version of an Excel spreadsheet that was 2 produced by Cuyahoga County, and the Bates 3 number at the top of the screen is 4 CUYAH_014627783. 5 A. Right. 6 Q. Do you see that? 7 A. Yeah. 8 Q. Then if you'd go back to your report 9 to footnote 82. 10 A. Yes. 11 Q. Are you there? 12 A. I am. 13 Q. Do you see that's the same Bates 14 number that you referenced in footnote 82 as 15 being the detailed expenditure data for Cuyahoga 16 County that you obtained from the Cuyahoga 17 County budget? Okay? 18 A. I see that, yes. 19 Q. Same question. Does this refresh your 20 recollection as to what the expenditure data 21 that you reference in your report looks like? 22 A. Yes. 23 MR. SOBOL: Objection. Form. 24 BY MR. KEYES:</p>
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<p>1 MR. SOBOL: Go "find next." 2 THE WITNESS: Maybe this is the family 3 services, Tom. 4 MR. SOBOL: Sorry. 5 THE WITNESS: I need to check. 6 MR. KEYES: I appreciate you want to 7 speed it, but I'd like to know what he can do 8 with this Excel spreadsheet and what he can't, 9 not what lawyers can instruct him to do. 10 (Whereupon, McGuire Exhibit Number 2 11 was marked for identification.) 12 BY MR. KEYES: 13 Q. If you can't, you can't. 14 A. Well, you're watching it, it's on 15 video. 16 Q. Okay. Can you minimize this file for 17 the moment? Can you close out this little box? 18 A. Up there? 19 Q. No, in the middle of the screen, can 20 you close it out, the search box? 21 A. Yes. 22 Q. And then can you go to the upper 23 right-hand corner and minimize this file? 24 Okay. Now what's on the screen is a</p>	<p>1 Q. Did you look at this Excel spreadsheet 2 yourself, or did you delegate that to others? 3 A. It would have been both. 4 Q. Did you go through account by account 5 to identify affected costs, and then for 6 affected costs whether they were overhead or 7 non-overhead? 8 A. I did. 9 Q. How did you do that for this data for 10 Cuyahoga County? 11 A. Well, the process is the same. 12 Also "county executive," that's not a 13 good example for an affected division. "County 14 law department." I'm finding it a little 15 difficult to give you complete answers to your 16 questions without information to remind me about 17 the functions of these departments. 18 Q. But what information did you have at 19 your fingertips when you first went through this 20 spreadsheet, when you first did this sorting 21 between affected and non-affected and the 22 sorting between overhead and non-overhead? 23 A. It was information about the 24 activities of the units that would help me make</p>

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<p style="text-align: right;">Page 298</p> <p>1 a determination of compensation costs, for</p> <p>2 example, which is the -- usually the biggest</p> <p>3 category.</p> <p>4 Q. What was the source of this other</p> <p>5 information that you used to help you in this</p> <p>6 sorting process?</p> <p>7 A. Statements about the activities that</p> <p>8 the division undertakes.</p> <p>9 Q. Statements from -- in what document?</p> <p>10 Where did you get those statements?</p> <p>11 A. These are also in budget and --</p> <p>12 Q. The annual budget documents for the</p> <p>13 county?</p> <p>14 A. I believe that's what they're referred</p> <p>15 to, yes.</p> <p>16 Q. Showing you what has been marked as</p> <p>17 McGuire Exhibit Number 3.</p> <p>18 (Whereupon, McGuire Exhibit Number 3</p> <p>19 was marked for identification.)</p> <p>20 MR. SOBOL: Perhaps I dosed off, was</p> <p>21 the spreadsheet, both of those spreadsheets</p> <p>22 Number 2?</p> <p>23 MR. KEYES: Yes, we'll put a slip</p> <p>24 sheet in and mark them.</p>	<p style="text-align: right;">Page 300</p> <p>1 divisions what the affected costs were, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Can you identify for me where in the</p> <p>4 operating budget you were able to identify which</p> <p>5 are the affected divisions?</p> <p>6 A. I won't go through page by page, I</p> <p>7 promise.</p> <p>8 MR. SOBOL: Well, then how are you</p> <p>9 going to answer the question?</p> <p>10 A. All right. So, for example, medical</p> <p>11 examiner is in a -- the table of contents.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. What page are you on?</p> <p>14 A. I'm still on the table of contents</p> <p>15 here.</p> <p>16 Q. What's the Bates number at the bottom</p> <p>17 so we have a clean record?</p> <p>18 A. This is SUMMIT, and then 000007557 is</p> <p>19 the table of contents that identifies where</p> <p>20 information in this bigger document rests with</p> <p>21 respect to the different divisions.</p> <p>22 Q. Okay.</p> <p>23 A. And so this is the kind of thing I</p> <p>24 would do, say okay, medical examiner looks like</p>
<p style="text-align: right;">Page 299</p> <p>1 BY MR. KEYES:</p> <p>2 Q. Okay. Do you recognize McGuire</p> <p>3 Exhibit 3?</p> <p>4 A. This is the kind of thing I looked at,</p> <p>5 yeah.</p> <p>6 Q. The kind of thing, or the thing you</p> <p>7 did look at?</p> <p>8 This is the operating budget for 2017</p> <p>9 for Summit County, correct?</p> <p>10 A. Yes. There were a series of these. I</p> <p>11 looked at for both counties.</p> <p>12 Q. Okay. And so when you say "a series,"</p> <p>13 you mean one for each year?</p> <p>14 A. Yes.</p> <p>15 Q. So you would have looked at the</p> <p>16 operating budget for Summit County from 2006</p> <p>17 through 2018?</p> <p>18 A. Yes.</p> <p>19 Q. And same thing for Cuyahoga County, an</p> <p>20 annual operating budget from 2006 to 2018?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So you've referenced using this</p> <p>23 document to help you identify what the affected</p> <p>24 divisions were, and within the affected</p>	<p style="text-align: right;">Page 301</p> <p>1 it could be a possibility.</p> <p>2 Q. So then would you go to the Pages 195</p> <p>3 to 198 for medical examiner?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Can you take us to Pages 195</p> <p>6 through 198?</p> <p>7 A. That's what I'm doing.</p> <p>8 Okay. On Page 196 of the budget</p> <p>9 document that has a Bates number -- do you want</p> <p>10 me to read the Bates number?</p> <p>11 Q. SUMMIT_7746?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 A. On that page there's a program</p> <p>15 description which indicates the activities of</p> <p>16 medical examiner office, which is to provide</p> <p>17 quality forensic death investigation services</p> <p>18 when persons die suddenly, unexpectedly, which</p> <p>19 is the case in some opioid-related deaths. So</p> <p>20 the medical examiner will be spending some</p> <p>21 resources dealing with opioid-related deaths.</p> <p>22 Q. So based on this program description</p> <p>23 on Page 196, you then said the Office of Medical</p> <p>24 Examiner is an affected division for Summit</p>

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<p>1 County?</p> <p>2 A. It's a potentially -- so it's -- so</p> <p>3 McGuire is looking at it. McGuire looks at the</p> <p>4 functions, seems like reasonable, then if it's</p> <p>5 somehow in doubt, which I don't think this in</p> <p>6 particular is in doubt, what the medical</p> <p>7 examiner might be doing with respect to opioids.</p> <p>8 And if confirmation is needed, then confirmation</p> <p>9 is needed. But this is the kind of indication</p> <p>10 of the activities of this particular division</p> <p>11 which I took to be this is a likely affected</p> <p>12 division.</p> <p>13 Q. Was confirmation needed for the Office</p> <p>14 of Medical Examiner for Summit County?</p> <p>15 A. Well, it's -- I don't -- I feel</p> <p>16 confident this would be correct. I don't -- I</p> <p>17 don't recall. I'm sure I talked to Compass Lex</p> <p>18 about this, but I don't recall whether there was</p> <p>19 any confirmation beyond that.</p> <p>20 Q. Was there anything else in this</p> <p>21 description of the Office of Medical Examiner</p> <p>22 within this operating budget that allowed you to</p> <p>23 either identify it as an affected division or</p> <p>24 confirm your belief that it was affected</p>	<p>1 Q. So you would infer from the titles.</p> <p>2 There's no narrative to this that describes the</p> <p>3 function of any particular position, correct?</p> <p>4 A. In this document I don't see one. I</p> <p>5 don't remember whether there was other documents</p> <p>6 that might have helped with that.</p> <p>7 Q. Okay. So for the Office of Medical</p> <p>8 Examiner for Summit County, you read the program</p> <p>9 description. You believed that it was an</p> <p>10 affected division.</p> <p>11 How, if at all, did you use these</p> <p>12 pages to identify specific accounts for the</p> <p>13 Office of Medical Examiner that were affected</p> <p>14 costs?</p> <p>15 A. Okay. These are -- I think you should</p> <p>16 think of them as potentially affected costs.</p> <p>17 But it involves this allocation between costs</p> <p>18 that were unlikely to be affected and those that</p> <p>19 are likely to be affected by the degree of harm</p> <p>20 in opioid. I think we're talking about the same</p> <p>21 thing.</p> <p>22 And what I did was to take a category</p> <p>23 like salaries, employees, and go back to the job</p> <p>24 descriptions and make a determination of which</p>
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<p>1 division?</p> <p>2 A. Let me see. I think that was what I</p> <p>3 needed in this case.</p> <p>4 Q. Okay. Then sticking with the Office</p> <p>5 of the Medical Examiner example, while you have</p> <p>6 it in front of you, did you use this document to</p> <p>7 also identify whether costs were affected or not</p> <p>8 affected?</p> <p>9 A. This is the kind of document, so again</p> <p>10 I -- my memory will be a little bit uncertain,</p> <p>11 but here are staff information of what the</p> <p>12 functions of different staff are. This is on</p> <p>13 7747.</p> <p>14 The next page, 7748, it gives</p> <p>15 information about the general nature of</p> <p>16 services.</p> <p>17 Q. Back on 7747, what tells you the</p> <p>18 function of any position?</p> <p>19 A. Well, there's a description of the</p> <p>20 job.</p> <p>21 Q. Okay.</p> <p>22 A. Chief deputy medical examiner. That</p> <p>23 person, I infer, is a medical examiner, forensic</p> <p>24 investigator.</p>	<p>1 of these employees was in each of those two</p> <p>2 categories. And this is referred to in my</p> <p>3 report as the overhead adjustment to</p> <p>4 compensation costs.</p> <p>5 Q. Okay.</p> <p>6 A. Very briefly, in the example we went</p> <p>7 through this morning there was compensation</p> <p>8 costs. That would be compensation costs, but</p> <p>9 all compensation costs shouldn't be counted.</p> <p>10 The ones that have to do -- that are fixed or</p> <p>11 with overhead are not counted, and that's</p> <p>12 referred to as the overhead adjustment here.</p> <p>13 That's expressed in percentage terms.</p> <p>14 Q. Sticking with the list of positions in</p> <p>15 the Office of Medical Examiner that are on</p> <p>16 Page 197 of this budget document, which of those</p> <p>17 did you treat as overhead, and which of those</p> <p>18 did you treat as non-overhead?</p> <p>19 A. Okay. The approach I took to doing</p> <p>20 this would have classified sort of the first</p> <p>21 batch as potentially affected, and things like</p> <p>22 secretarial, senior administrative, support</p> <p>23 services administrator, they would have been put</p> <p>24 into the overhead category.</p>

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<p>1 Now, again, I want to acknowledge that</p> <p>2 if you go back to my report and see what exactly</p> <p>3 did Professor McGuire do, there's going to be</p> <p>4 some slippage for the scores of departments and</p> <p>5 scores of years, scores of categories. But I</p> <p>6 didn't do it on the fly. I didn't do it in a</p> <p>7 short time frame like this, but that was the</p> <p>8 general approach.</p> <p>9 Q. Okay. And did you use any other</p> <p>10 documents, then, besides the expenditure data we</p> <p>11 saw on the laptop in the Excel file and these</p> <p>12 annual operating budgets?</p> <p>13 MR. SOBOL: Objection. Asked and</p> <p>14 answered.</p> <p>15 A. I remember looking at some documents</p> <p>16 that had detail on the salaries of different</p> <p>17 personnel. I just don't remember whether they</p> <p>18 were Cuyahoga or whether they were Summit.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. Anything else? I'm trying to</p> <p>21 understand the universe of documents you looked</p> <p>22 at and consulted in order to identify affected</p> <p>23 costs versus non-affected costs, overhead costs</p> <p>24 versus non-overhead costs.</p>	<p>1 cost approach in any other case where you were a</p> <p>2 testifying expert quantifying damages?</p> <p>3 A. It's really implicit in using</p> <p>4 expenditures as a quantification of damages.</p> <p>5 That's the whole idea of doing it that way.</p> <p>6 Q. Did you use someone else's internal</p> <p>7 costs to identify opportunity costs, and then</p> <p>8 use those opportunity costs as damages in any</p> <p>9 other case where you've been a testifying</p> <p>10 expert?</p> <p>11 A. The application of opportunity costs</p> <p>12 that comes to mind in other contexts of damages</p> <p>13 would have been from the standpoint of a</p> <p>14 purchaser, extra money that someone has to spend</p> <p>15 because of something. It's an opportunity cost</p> <p>16 concept still.</p> <p>17 Q. Did you consider using an incremental</p> <p>18 cost approach in this case?</p> <p>19 A. I'm not sure what you mean by that.</p> <p>20 Q. Have you heard of incremental cost</p> <p>21 approach before to calculating damages?</p> <p>22 A. I have heard of incremental cost many</p> <p>23 times, but it can be used differently in</p> <p>24 different contexts.</p>
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<p>1 You've identified the detailed</p> <p>2 expenditure data, which is the Excel</p> <p>3 spreadsheets on the computer. You've identified</p> <p>4 these operating budgets, and we just went</p> <p>5 through a sample of that exercise. And I asked</p> <p>6 you whether there's anything else, and you said</p> <p>7 that you remember there was some detail on</p> <p>8 salaries, but you don't know where that data is.</p> <p>9 A. But I don't remember what exactly that</p> <p>10 applied.</p> <p>11 Q. Okay. So besides those three sets of</p> <p>12 documents, did you look at anything else as part</p> <p>13 of this exercise?</p> <p>14 A. I very likely did, but I don't</p> <p>15 remember what it would be as I sit here today.</p> <p>16 Q. Did you consider any other approach to</p> <p>17 quantifying damages in this case besides your</p> <p>18 opportunity cost approach?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 You may answer.</p> <p>21 A. Well, the opportunity cost is so</p> <p>22 natural. No, I don't think so.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. And have you used that opportunity</p>	<p>1 Q. Okay. So in the context of</p> <p>2 quantifying damages, have you ever seen someone</p> <p>3 use an incremental cost approach?</p> <p>4 A. I don't recall.</p> <p>5 Q. Have you ever seen someone compare</p> <p>6 what the incremental costs are as a result of</p> <p>7 something relative to what the costs would be</p> <p>8 absent that something?</p> <p>9 A. Well, I think that's often a good</p> <p>10 question of what are the costs but-for</p> <p>11 something, and that could well be called</p> <p>12 incremental costs. Maybe that's how you're</p> <p>13 using it.</p> <p>14 Q. Well, do you agree that when you're</p> <p>15 quantifying damages you're supposed to compare</p> <p>16 the world as it is versus the world as it would</p> <p>17 be absent the conduct being challenged?</p> <p>18 A. Well, I'd say, broadly speaking, that</p> <p>19 makes sense to me. In this case my instructions</p> <p>20 from counsel were to quantify the costs to the</p> <p>21 bellwether governments due to the opioid crisis,</p> <p>22 and that would be regarded as damages.</p> <p>23 Q. You were told that that would be</p> <p>24 called damages in your report, right?</p>

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<p>1 MR. SOBOL: Objection.</p> <p>2 A. This is in the front page. I probably</p> <p>3 should get this wording correct, but let me just</p> <p>4 double-check.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. If you'd like some help, it's on</p> <p>7 Page 4. It's the end of Paragraph 6.</p> <p>8 A. Okay.</p> <p>9 Q. You say, "Finally, upon instruction</p> <p>10 from counsel, I refer to the cost consequences</p> <p>11 of harms to the Bellwether governments due to</p> <p>12 defendants' misconduct as damages," right?</p> <p>13 A. That's what I was looking for.</p> <p>14 Q. That was the instruction you were</p> <p>15 given?</p> <p>16 A. That was the instruction I was given,</p> <p>17 yes.</p> <p>18 Q. And so you were told by counsel to</p> <p>19 refer to the cost consequences as damages?</p> <p>20 A. Yes, that's what the sentence says.</p> <p>21 Q. And the cost consequences you're</p> <p>22 talking about are the opportunity costs of</p> <p>23 spending dollars on something related to opioids</p> <p>24 versus something else?</p>	<p>1 absence of the opioid crisis they might not have</p> <p>2 directed additional funds to the medical</p> <p>3 examiner office, so the medical examiner's</p> <p>4 budget did go up as a result of the opioid</p> <p>5 crisis. I'm giving you this as an example.</p> <p>6 Then the degree to which the expenditure was</p> <p>7 devoted to opioids that are a component of that</p> <p>8 are captured in my analysis, as well as, as well</p> <p>9 as any expenditures that are taken from other</p> <p>10 things the examiner would have otherwise done.</p> <p>11 Q. But you're bringing it down to a</p> <p>12 division level. I'm asking at the county level.</p> <p>13 A. At the county level?</p> <p>14 Q. Yes. Did Summit County or Cuyahoga</p> <p>15 County spend any additional dollars because of</p> <p>16 the opioid crisis that they would not have spent</p> <p>17 absent the opioid crisis?</p> <p>18 MR. SOBOL: Objection.</p> <p>19 A. That's a very difficult counterfactual</p> <p>20 for me. Since I do work at the division level,</p> <p>21 which is where the method we've been talking</p> <p>22 about is properly applied, it might be that, I</p> <p>23 don't know, some additional borrowing, some</p> <p>24 additional revenue.</p>
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<p>1 A. Broadly speaking.</p> <p>2 Q. So did you attempt to identify any</p> <p>3 additional dollars that either Summit County or</p> <p>4 Cuyahoga County spent because of the opioid</p> <p>5 crisis that it would not have spent absent the</p> <p>6 opioid crisis?</p> <p>7 MR. SOBOL: Objection.</p> <p>8 A. Well, embedded in my approach here,</p> <p>9 any such dollars would have been captured.</p> <p>10 For example, suppose the budget of the</p> <p>11 medical examiner was deemed to be insufficient</p> <p>12 because of the opioid crisis, and that budget</p> <p>13 allocation was increased by the county, I would</p> <p>14 see that, and I would count that.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. I understand you would count that.</p> <p>17 I'm not asking about different ways an existing</p> <p>18 set of dollars were spent.</p> <p>19 I'm asking, did you identify any</p> <p>20 dollars that Summit County or Cuyahoga County</p> <p>21 spent because of the opioid crisis that it would</p> <p>22 not have spent absent the opioid crisis?</p> <p>23 A. Well, as I explained, to the degree</p> <p>24 that that happened, in the example of in the</p>	<p>1 What matters is where it's spent and</p> <p>2 how it's spent, not the source of the revenue.</p> <p>3 So I capture that in the method I've been</p> <p>4 talking about.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. Okay. You're not engaging in the</p> <p>7 question I asked.</p> <p>8 If Cuyahoga County had \$100, you're</p> <p>9 saying that it might have spent those \$100</p> <p>10 differently because of the opioid crisis</p> <p>11 relative to what it would have done absent the</p> <p>12 opioid crisis, right?</p> <p>13 A. That's the kind of reasoning that I'm</p> <p>14 applying, yes.</p> <p>15 Q. Did you identify any instance where</p> <p>16 because of the opioid crisis Summit County or</p> <p>17 Cuyahoga County spent more than \$100, whereas</p> <p>18 absent the opioid crisis it would have only</p> <p>19 spent \$100?</p> <p>20 MR. SOBOL: Objection.</p> <p>21 A. See, my job here is to identify the</p> <p>22 costs to the counties that take the form of</p> <p>23 additional spending in divisions due to the</p> <p>24 presence of the opioid problem.</p>

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<p style="text-align: right;">Page 314</p> <p>1 BY MR. KEYES:</p> <p>2 Q. Additional spending on the division</p> <p>3 level.</p> <p>4 A. I shouldn't have said additional. Let</p> <p>5 me strike additional.</p> <p>6 Q. Because it's not additional.</p> <p>7 A. See, it may or may not be additional.</p> <p>8 Q. Do you know one way or the other?</p> <p>9 A. The -- what I'm answering is that I</p> <p>10 capture both. So the degree to which there's</p> <p>11 more given to a division that wouldn't have</p> <p>12 otherwise been given in the absence of the</p> <p>13 opioid crisis, which I think is the point of</p> <p>14 your hypothetical, if they spend it on</p> <p>15 opioid-related problems, then I'm going to count</p> <p>16 it. It's the same opportunity cost as if they</p> <p>17 took the money from something else the police</p> <p>18 chief was doing.</p> <p>19 Q. But it's an opportunity cost; it's not</p> <p>20 an additional dollar spent by either county</p> <p>21 relative to what it would have spent absent the</p> <p>22 opioid crisis?</p> <p>23 MR. SOBOL: Objection.</p> <p>24 A. I wouldn't make that distinction.</p>	<p style="text-align: right;">Page 316</p> <p>1 because of the opioid crisis, not whether the</p> <p>2 existing pie was divvied up different ways, but</p> <p>3 whether the pie chart that reflects spending is</p> <p>4 bigger because of the opioid crisis. Did you do</p> <p>5 that?</p> <p>6 MR. SOBOL: Objection. Asked and</p> <p>7 answered several times.</p> <p>8 A. What I did was fulfill my assignment,</p> <p>9 which required me to consider both of those</p> <p>10 sources of funds devoted to the opioid crisis.</p> <p>11 It need not only be a matter of reallocation of</p> <p>12 existing resources. Some budgets of some</p> <p>13 divisions may have been increased due to the</p> <p>14 opioid crisis. That's, I think, the spirit of</p> <p>15 what you're asking.</p> <p>16 And to the degree that happened and</p> <p>17 the degree to which those were devoted to</p> <p>18 opioids, then I count them, as I should.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. In 2006, how much less would Summit</p> <p>21 County or Cuyahoga County have spent if there</p> <p>22 had been no opioid crisis compared to what it</p> <p>23 did spend?</p> <p>24 MR. SOBOL: Objection. Asked and</p>
<p style="text-align: right;">Page 315</p> <p>1 They're both opportunity costs, whether the</p> <p>2 dollars come from additional taxes or whether</p> <p>3 they come from diversion.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. But you looked at one and not the</p> <p>6 other?</p> <p>7 A. I looked at both. That's what I need</p> <p>8 to do, to look at both together. By looking at</p> <p>9 a budget of a division and what share of that</p> <p>10 budget goes to different kind of activities, to</p> <p>11 the degree that budget is going up for some</p> <p>12 reason, then I'm able to capture that in the</p> <p>13 accounting I did.</p> <p>14 Q. Right.</p> <p>15 And you capture it as an opportunity</p> <p>16 cost because those dollars -- those additional</p> <p>17 dollars are spent by that division rather than</p> <p>18 someone else within the county, right?</p> <p>19 A. Well, the general approach in</p> <p>20 economics is opportunity cost, so I don't know</p> <p>21 if you're trying to establish some spending does</p> <p>22 not have an opportunity cost.</p> <p>23 Q. No, I'm trying to identify whether</p> <p>24 there are incremental costs at the county level</p>	<p style="text-align: right;">Page 317</p> <p>1 answered several times.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. Total dollars.</p> <p>4 MR. SOBOL: Objection. Asked and</p> <p>5 answered several times.</p> <p>6 A. The answer I have for that is the</p> <p>7 spending at the division level on services</p> <p>8 related to opioids, which had that been freed</p> <p>9 up, which I think is the nature of your</p> <p>10 question.</p> <p>11 BY MR. KEYES:</p> <p>12 Q. You keep talking about the division</p> <p>13 level. I didn't ask about the division level.</p> <p>14 I asked on the county level, in 2006,</p> <p>15 how much less would Summit County or Cuyahoga</p> <p>16 County have spent if there had been no opioid</p> <p>17 crisis compared to what it did spend that year?</p> <p>18 MR. SOBOL: Objection. Asked and</p> <p>19 answered.</p> <p>20 A. This is kind of the inverse of your</p> <p>21 earlier question. Now we're taking the opioid</p> <p>22 crisis away, and we're freeing up funds that</p> <p>23 also have these two destinations. Previously I</p> <p>24 talked about this in terms of sources to say</p>

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<p>1 that the sources of funds could either be</p> <p>2 diversion or new funds, and I want to count both</p> <p>3 of those with respect to quantifying the</p> <p>4 opportunity cost of spending on opioids.</p> <p>5 Now the question is kind of the</p> <p>6 opposite, suppose you take the opioids spending</p> <p>7 away, there's two destinations for those funds.</p> <p>8 They could be in some kind of reallocation in</p> <p>9 which they went to other services that the</p> <p>10 county provided, or they could also be</p> <p>11 associated with a fall in the total budget of</p> <p>12 the county.</p> <p>13 So it's really the same answer in</p> <p>14 reverse, that -- and it's kind of the forward</p> <p>15 direction, yes, I want to count both, I do count</p> <p>16 both. In the backward direction, the amount I</p> <p>17 want to take away, it could be diverted or it</p> <p>18 could have led to fewer revenue collections for</p> <p>19 the county.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. Referring you again to the last three</p> <p>22 charts in your report, it's Tables IV.12, IV.13</p> <p>23 and IV.14.</p> <p>24 A. Okay.</p>	<p>1 no opioid problem?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 A. All right. We've been talking about</p> <p>4 this the last few minutes, and I think I've</p> <p>5 clarified that the dollars spent on the opioid</p> <p>6 crisis could be taken from other activities in</p> <p>7 that division, or even conceivably activities of</p> <p>8 some other division, or could be associated with</p> <p>9 increased budgets of the affected divisions, and</p> <p>10 both of those are opportunity costs, both of</p> <p>11 those should be counted, and I count both of</p> <p>12 them. So I...</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Are you offering an opinion that if</p> <p>15 there had been no opioid problem the dollars you</p> <p>16 list as total damages would not have been spent</p> <p>17 by the Summit and Cuyahoga Counties?</p> <p>18 MR. SOBOL: Objection. Asked and</p> <p>19 answered.</p> <p>20 A. That's not my testimony.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. Are you offering the opinion that the</p> <p>23 dollars that you describe as total damages are</p> <p>24 monies that the bellwether government spent only</p>
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<p>1 Q. Are you there?</p> <p>2 A. Yes.</p> <p>3 Q. These are the damages you calculated?</p> <p>4 A. Yes.</p> <p>5 Q. And these are the only damages you</p> <p>6 calculated in this engagement on damages,</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. The dollars that you say are</p> <p>10 total dollars are dollars that you say would</p> <p>11 have been spent by the bellwether governments on</p> <p>12 something else if there was no opioid problem,</p> <p>13 correct?</p> <p>14 A. Is that a quote from me?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. No, I think that's what you've been</p> <p>18 saying. It's not a quote.</p> <p>19 MR. SOBOL: Objection.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. Is it accurate to say that the dollars</p> <p>22 that you say are total damages are dollars that</p> <p>23 would have been spent by Summit County or</p> <p>24 Cuyahoga County on something else if there was</p>	<p>1 because of the opioid problem?</p> <p>2 MR. SOBOL: Objection. Asked and</p> <p>3 answered.</p> <p>4 A. That's also not an accurate statement.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. So you are not offering that opinion,</p> <p>7 correct?</p> <p>8 MR. SOBOL: Objection.</p> <p>9 A. That's an inaccurate statement.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. Did you examine what dollars Summit</p> <p>12 County or Cuyahoga County spent in excess of</p> <p>13 their budgets because of the opioid problem?</p> <p>14 MR. SOBOL: Objection. Same, that's</p> <p>15 his answer.</p> <p>16 A. This is a version of the earlier</p> <p>17 discussion, and any, any additional funding for</p> <p>18 a division that may have come from going over</p> <p>19 budget, which I have a general understanding of</p> <p>20 what that would imply, are properly counted, and</p> <p>21 yes, I counted them as part of my cost analysis.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. Did you examine what dollars Summit</p> <p>24 County or Cuyahoga County spent in excess of</p>

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<p>1 their budgets because of the opioid problem?</p> <p>2 MR. SOBOL: Objection. Asked and</p> <p>3 answered.</p> <p>4 A. My accounting of funds included funds</p> <p>5 that would have been diverted from some other</p> <p>6 use, and any additional funds that would be</p> <p>7 coming from funds over budget that were devoted</p> <p>8 to the opioid crisis.</p> <p>9 BY MR. KEYES:</p> <p>10 Q. Where in your report do you identify</p> <p>11 the dollars that Summit County or Cuyahoga</p> <p>12 County spent in excess of their budgets because</p> <p>13 of the opioid problem?</p> <p>14 A. That's not necessary for me to do, to</p> <p>15 be able to count the opportunity costs of</p> <p>16 dealing with the opioid crisis.</p> <p>17 Q. Okay. So did you -- do you set forth</p> <p>18 anywhere from your report a quantification of</p> <p>19 the dollars that Summit County or Cuyahoga</p> <p>20 County spent in excess of their budgets because</p> <p>21 of the opioid problem?</p> <p>22 A. What I did is take the total</p> <p>23 opportunity cost, which could have come from</p> <p>24 different sources, as I've said a number of</p>	<p>1 answered.</p> <p>2 A. I didn't need to identify any sources</p> <p>3 of additional budgets for divisions in order to</p> <p>4 make a quantification of the opportunity cost of</p> <p>5 the funds.</p> <p>6 BY MR. KEYES:</p> <p>7 Q. Do you set forth anywhere in your</p> <p>8 report a quantification of the dollars that</p> <p>9 Summit County or Cuyahoga County spent in excess</p> <p>10 of their budgets because of the defendants'</p> <p>11 conduct?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 I think you just asked that question.</p> <p>14 MR. KEYES: No, I asked because of the</p> <p>15 opioid problem. This one is because of the</p> <p>16 defendants' conduct.</p> <p>17 A. This is new.</p> <p>18 Yes, I do.</p> <p>19 BY MR. KEYES:</p> <p>20 Q. And so show me --</p> <p>21 A. I'm sorry.</p> <p>22 Q. Yeah, you keep saying I don't need to,</p> <p>23 so I thought you were going to say --</p> <p>24 A. I forgot the first part of your</p>
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<p>1 times in the last few minutes, additional</p> <p>2 budgets from alternative additional budget</p> <p>3 sources including unanticipated spending or</p> <p>4 other additional budget sources and from</p> <p>5 anything that takes the form of diversion.</p> <p>6 Q. Your answer says "could have come from</p> <p>7 different sources." You're acknowledging the</p> <p>8 possibility, right?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 BY MR. KEYES:</p> <p>11 Q. "Could have come from other sources."</p> <p>12 MR. SOBOL: Objection.</p> <p>13 A. Maybe ask a question so I'm</p> <p>14 understanding what I'm answering.</p> <p>15 BY MR. KEYES:</p> <p>16 Q. I'm not asking whether some of the</p> <p>17 dollars somewhere in your quantification might</p> <p>18 have come from somewhere else.</p> <p>19 I'm asking you, do you set forth</p> <p>20 anywhere in your report a quantification of the</p> <p>21 dollars that Summit County or Cuyahoga County</p> <p>22 spent in excess of their budgets because of the</p> <p>23 opioid problem?</p> <p>24 MR. SOBOL: Objection. Asked and</p>	<p>1 question, so --</p> <p>2 Q. Let me ask it again.</p> <p>3 A. Thank you.</p> <p>4 Q. Do you set forth anywhere in your</p> <p>5 report a quantification of the dollars that</p> <p>6 Summit County or Cuyahoga County spent in excess</p> <p>7 of their budgets because of the defendants'</p> <p>8 conduct?</p> <p>9 MR. SOBOL: Objection. Asked and</p> <p>10 answered.</p> <p>11 A. There is a similar answer to the</p> <p>12 question, even though it's a different question.</p> <p>13 I realize it's a different question.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. You're going to tell me you didn't</p> <p>16 need to.</p> <p>17 A. I'm going to tell you that --</p> <p>18 MR. SOBOL: Why are you asking the</p> <p>19 questions if you know the answers?</p> <p>20 MR. KEYES: Because he won't give me a</p> <p>21 yes-or-no answer.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. I know you won't.</p> <p>24 A. I lost my train of thought. So in</p>

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<p>1 order to --</p> <p>2 Q. It's a yes-or-no question.</p> <p>3 MR. SOBOL: He has to remember what</p> <p>4 the question was.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. Well, it's a yes-or-no question. I</p> <p>7 appreciate you being candid in saying you're not</p> <p>8 going to give me a yes-or-no answer. I think</p> <p>9 the record bears it out today, even though it's</p> <p>10 a yes-or-no question. But I'm going to ask it</p> <p>11 of you, and I'm going to ask for your answer.</p> <p>12 Do you set out anywhere in your report</p> <p>13 a quantification of the dollars that Summit</p> <p>14 County or Cuyahoga County spent in excess of</p> <p>15 their budget because of the defendants' conduct?</p> <p>16 MR. SOBOL: Objection. Asked and</p> <p>17 answered.</p> <p>18 A. Such funds would be reflected in the</p> <p>19 budgets that I looked at by division and</p> <p>20 allocated to defendants' misconduct.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. So tell me where in your report I go</p> <p>23 to find that, to find the dollars that Summit</p> <p>24 County or Cuyahoga County spent in excess of</p>	<p>1 marketplace and having to spend money in the</p> <p>2 marketplace?</p> <p>3 MR. SOBOL: Objection.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. Perhaps be overcharged.</p> <p>6 MR. SOBOL: Objection.</p> <p>7 A. I don't think I get your question.</p> <p>8 But just to move along a little bit, the cost</p> <p>9 components of the division that we discussed</p> <p>10 earlier are payments to what an economist would</p> <p>11 call resources that are traded in, for example,</p> <p>12 labor markets, so yes.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. Did you attempt to identify instances</p> <p>15 where Cuyahoga County or Summit County was</p> <p>16 overcharged in the marketplace?</p> <p>17 A. Overcharged.</p> <p>18 MR. SOBOL: Objection.</p> <p>19 A. Help me by defining what overcharge</p> <p>20 is, what you mean by overcharge.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. Well, you told me this morning that</p> <p>23 you've calculated overpayments as an expert in</p> <p>24 other cases before, right?</p>
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<p>1 their budgets because of the defendants'</p> <p>2 conduct.</p> <p>3 A. I didn't need to make that</p> <p>4 quantification.</p> <p>5 Q. Did you study what the normal costs</p> <p>6 are to be incurred by Summit County or Cuyahoga</p> <p>7 County because of opioids?</p> <p>8 A. The normal costs. I'm sorry, what</p> <p>9 might you mean by "normal costs"?</p> <p>10 Q. The typical or ordinary costs in a</p> <p>11 given year.</p> <p>12 A. I studied costs. I didn't try to</p> <p>13 determine what was typical.</p> <p>14 Q. Or normal or ordinary, correct?</p> <p>15 A. I would have a hard time interpreting</p> <p>16 that from an economic standpoint.</p> <p>17 Q. Did you identify any costs that were</p> <p>18 incurred by Summit County or Cuyahoga County</p> <p>19 because it was participating in the marketplace?</p> <p>20 A. I'm sorry, I don't understand what</p> <p>21 you're getting at.</p> <p>22 Q. Did you attempt to identify or</p> <p>23 quantify costs that were incurred by Summit</p> <p>24 County or Cuyahoga County participating in the</p>	<p>1 A. Yes.</p> <p>2 Q. So paying more than someone says is</p> <p>3 the right benchmark. Right?</p> <p>4 A. Well, normally the right benchmark is</p> <p>5 a competitive price.</p> <p>6 Q. Okay. So if we use a competitive</p> <p>7 price, did you undertake to identify any costs</p> <p>8 that were incurred by Summit County or Cuyahoga</p> <p>9 County by spending money in the marketplace</p> <p>10 above a competitive price?</p> <p>11 A. Let me tell you why I didn't need to</p> <p>12 do that.</p> <p>13 Q. Well, first just say yes or no. You</p> <p>14 can say no, and then you can tell me why you</p> <p>15 didn't need to do it. I know you've been</p> <p>16 trained in your years to never say no, but</p> <p>17 you're essentially saying no every time you say</p> <p>18 "I don't need to."</p> <p>19 For the sake of a clean record, can</p> <p>20 you say, no, I didn't do that, and here's why I</p> <p>21 didn't need to?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 Whatever, go ahead.</p> <p>24 BY MR. KEYES:</p>

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<p>1 Q. Did you do that?</p> <p>2 MR. SOBOL: Now, what's the question?</p> <p>3 I was almost letting you go forward, and then</p> <p>4 you did that.</p> <p>5 BY MR. KEYES:</p> <p>6 Q. Did you undertake to identify any</p> <p>7 costs that were incurred by Summit County or</p> <p>8 Cuyahoga County by spending money in the</p> <p>9 marketplace above a competitive price?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 You may answer.</p> <p>12 A. This was irrelevant, and I'll explain</p> <p>13 by example.</p> <p>14 Suppose there were market power in the</p> <p>15 labor market, and we're talking about, I don't</p> <p>16 know, some category of workers that are able to</p> <p>17 extract a wage that's above the competitive</p> <p>18 wage, but the county has to pay this because</p> <p>19 they -- well, they just have to pay it. They</p> <p>20 pay it. It still has the same opportunity cost.</p> <p>21 If I pay my \$75 and, oh, my gosh, the</p> <p>22 auto repair company is a monopolist in my town</p> <p>23 and the competitive price would have been \$35, I</p> <p>24 end up paying \$75. It's the same, the same from</p>	<p>1 I think the other example that I</p> <p>2 mention somewhere in the report is Division of</p> <p>3 Family Services, that if there's more children</p> <p>4 who need attention because of the opioid crisis,</p> <p>5 the parents are dying, the kids have to be taken</p> <p>6 care of, there's other kids who would have been</p> <p>7 referred to family services anyway, and there's</p> <p>8 less time for those kids.</p> <p>9 So in an important sense, much of what</p> <p>10 public service is about is time. And to the</p> <p>11 degree to which that time is interfered with by</p> <p>12 anything in this case, the opioid crisis, it's a</p> <p>13 deterioration in the quality of the public</p> <p>14 services.</p> <p>15 Q. Those are the two examples you had in</p> <p>16 mind when you made that statement in your</p> <p>17 report?</p> <p>18 A. I believe those are examples that we</p> <p>19 discussed in my report, or mentioned in my</p> <p>20 report. The -- probably division by division it</p> <p>21 would be, you know, because I already talked</p> <p>22 about what kind of quality deterioration as</p> <p>23 workers have less time to devote to other things</p> <p>24 that would have been due to the opioid crisis.</p>
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<p>1 my standpoint. The opportunity cost is the</p> <p>2 same.</p> <p>3 BY MR. KEYES:</p> <p>4 Q. In your report you claim that by</p> <p>5 incurring opioid-related expenditures the</p> <p>6 quality of other services provided by Summit</p> <p>7 County and Cuyahoga County was reduced. Is that</p> <p>8 your opinion?</p> <p>9 A. In some cases that would be correct,</p> <p>10 yes.</p> <p>11 Q. Okay. So what other services are you</p> <p>12 referring to such that the quality went down?</p> <p>13 A. I think I discuss an example, maybe</p> <p>14 two examples, of the quality of police services.</p> <p>15 What do you mean by "the quality of police</p> <p>16 services"? You mean things like response time?</p> <p>17 You mean things like they're able to handle this</p> <p>18 category of offense? You mean things like</p> <p>19 officers have adequate time to pursue an</p> <p>20 investigation, and the degree to which those</p> <p>21 things are interfered with because of officer</p> <p>22 time that needs to be devoted to the opioid</p> <p>23 crisis? That's an effect on the quality of</p> <p>24 police services.</p>	<p>1 Q. Did you measure the quality of the</p> <p>2 police services provided by either Summit County</p> <p>3 or Cuyahoga County?</p> <p>4 A. This is one of those categories that</p> <p>5 trusting the concept of opportunity cost, the</p> <p>6 value of any reduced services is indicated by</p> <p>7 the dollars devoted to opioids.</p> <p>8 Q. So you have a theory of calculating</p> <p>9 damages where the theory does it all. By</p> <p>10 definition the theory gives you what you want.</p> <p>11 You don't need to study the real world, you've</p> <p>12 got the theory, right?</p> <p>13 MR. SOBOL: Objection, objection,</p> <p>14 objection, to each of the three questions.</p> <p>15 A. I wouldn't put it that way, no.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. Well --</p> <p>18 MR. SOBOL: You don't even let me do</p> <p>19 my objection thing.</p> <p>20 THE WITNESS: Pardon me.</p> <p>21 MR. SOBOL: You're not even letting me</p> <p>22 do my objecting thing.</p> <p>23 THE WITNESS: I'm trying to.</p> <p>24 BY MR. KEYES:</p>

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<p style="text-align: right;">Page 334</p> <p>1 Q. Did you study the quality of police 2 services before the opioid epidemic? 3 A. The -- 4 Q. I don't want you to tell me in theory 5 what happens. I want to know whether you 6 actually studied it with respect to Summit 7 County or Cuyahoga County police. 8 A. You need to know and understand in 9 answering this question that the deterioration 10 and the time that police have to do things is 11 associated with a decline in that quality. 12 That's the thing that's important to me. That's 13 the thing -- if you want to call that an 14 assumption, all right, but that's the important 15 element that you need to understand in 16 understanding my answer to that question. 17 Q. Okay. So you think it's important for 18 me to know that. 19 Separate from that, did you measure 20 the quality of the police services before the 21 opioid crisis? 22 A. What dates are you talking about here? 23 Q. Well, before 2006. 24 A. My work began with spending in 2006,</p>	<p style="text-align: right;">Page 336</p> <p>1 time? 2 A. It would have been the same answer. 3 Q. You didn't need to? 4 MR. SOBOL: Objection. 5 A. I didn't need to in order to identify 6 the opportunity cost of the funds devoted to 7 opioids. 8 BY MR. KEYES: 9 Q. Is it accurate to say that you never 10 measured the quality of services provided by the 11 Department of Children and Family Services for 12 Summit County or Cuyahoga County at any point 13 before 2006, in 2006, or any year after 2006? 14 MR. SOBOL: Objection. Asked and 15 answered, compound. 16 A. I think it's the same answer for 17 police, that it wasn't necessary for me to 18 fulfill my assignment. 19 BY MR. KEYES: 20 Q. And for any period of time from before 21 2006 through the present, have you measured any 22 or quantified any change in the quality of the 23 services provided by the police or the 24 Department of Children and Family Services?</p>
<p style="text-align: right;">Page 335</p> <p>1 so... 2 Q. Did you measure the quality of police 3 services in 2006 or any subsequent year? 4 A. Any subsequent year. I measured the 5 resources available for police services in those 6 years. 7 Q. That's not my question. 8 A. I know. 9 Q. Did you -- okay, well, if you know it, 10 then answer the question I'm posing. 11 My question is, did you measure the 12 quality of police services in 2006 or any 13 subsequent year? 14 A. See, this wasn't necessary for me to 15 conduct my assignment, so I didn't do that. 16 Q. Is it accurate to say that you never 17 measured the quality of police services for 18 Summit County or Cuyahoga County at any point 19 before 2006 -- in 2006 or any year after 2006? 20 A. The application of the theory of 21 opportunity cost didn't require me to do that. 22 Q. Did you measure the quality of the 23 services provided by the Department of family -- 24 Children and Family Services at any point in</p>	<p style="text-align: right;">Page 337</p> <p>1 MR. SOBOL: Objection. Asked and 2 answered. 3 A. What I studied was the resources 4 available to deal with other services. The 5 connection to quality is, I think, clear. 6 BY MR. KEYES: 7 Q. Not my question. 8 My question is, for any period of 9 time, have you measured or quantified any change 10 in the quality of the services provided by the 11 police or the Department of Children and Family 12 Services for either Summit County or Cuyahoga 13 County? 14 MR. SOBOL: Objection. Asked and 15 answered, compound. 16 A. My answer is the same, because I want 17 the reader of this to understand why it is, that 18 for me to identify the opportunity cost didn't 19 require me to make that quantification. 20 BY MR. KEYES: 21 Q. So you didn't do it? 22 MR. SOBOL: Objection. Asked and 23 answered. 24 BY MR. KEYES:</p>

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<p>1 Q. I mean, typically when someone says</p> <p>2 did you do X, the witness, particularly an</p> <p>3 expert witness who has been through the drill</p> <p>4 before, can say yes, I did, and no, I didn't,</p> <p>5 and the reason I didn't is the following. You</p> <p>6 won't even say yes or no. I don't know what</p> <p>7 you're trying to muddle here. I just want a</p> <p>8 clean answer to all these questions about did</p> <p>9 you do this or not.</p> <p>10 Do I understand, though, that every</p> <p>11 time I've asked you did you do something and you</p> <p>12 say it wasn't necessary, that means you didn't</p> <p>13 do it?</p> <p>14 MR. SOBOL: Objection. To which time</p> <p>15 he said that?</p> <p>16 A. Yeah, I would have to see what you're</p> <p>17 talking about in that context.</p> <p>18 MR. KEYES: Okay. Why don't we take a</p> <p>19 break.</p> <p>20 THE VIDEOGRAPHER: The time is</p> <p>21 4:49 p.m., and we're off the record.</p> <p>22 (Whereupon, a recess was taken.)</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 5:12 p.m., and we're on the record.</p>	<p>1 you understand it, for the Summit County ADM</p> <p>2 Board?</p> <p>3 A. That would be how much money they have</p> <p>4 available at the end of the year.</p> <p>5 Q. So these are excess, unused funds as</p> <p>6 of the end of each year?</p> <p>7 A. Something like that. Well, they're</p> <p>8 available for future years.</p> <p>9 Q. So it's calculated as of the end of</p> <p>10 each year, and it's the unused funds that are</p> <p>11 available for expenditures going forward?</p> <p>12 A. Yeah, something like that.</p> <p>13 Q. And so those are funds that could be</p> <p>14 spent on an unmet need?</p> <p>15 A. Well, they could be spent on anything.</p> <p>16 Q. Including whatever the ADM Board</p> <p>17 identifies as an unmet need?</p> <p>18 A. Yes. I mean, yes.</p> <p>19 Q. And do you see that the excess funds</p> <p>20 for the Summit County ADM Board as of the end of</p> <p>21 2009 was 17.7 million?</p> <p>22 A. I do see that, yes.</p> <p>23 Q. It increased at the end of 2010 to</p> <p>24 28.3 million?</p>
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<p>1 (Whereupon, McGuire Exhibit Number 4</p> <p>2 was marked for identification.)</p> <p>3 BY MR. KEYES:</p> <p>4 Q. Professor McGuire, I'm showing you</p> <p>5 what has been marked as McGuire Exhibit 4. Do</p> <p>6 you know what this document is?</p> <p>7 A. Yes.</p> <p>8 Q. What is it?</p> <p>9 A. It's the -- contains budget</p> <p>10 information for the ADAMHS Board.</p> <p>11 Q. For what period of time?</p> <p>12 A. There's 2009 to -- 2009 to 2020.</p> <p>13 Q. And it shows actuals for 2009 through</p> <p>14 2017, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And then budgeted amounts from 2018</p> <p>17 through 2020?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. And if you look at the bottom</p> <p>20 of the chart, there's a line that says "Ending</p> <p>21 Cash Balance."</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. What is the ending cash balance, as</p>	<p>1 A. Yes.</p> <p>2 Q. Increased at the end of 2011 to</p> <p>3 35.9 million?</p> <p>4 A. Yes.</p> <p>5 Q. And then increased in 2012 to</p> <p>6 40.3 million?</p> <p>7 A. Yes.</p> <p>8 Q. Increased in 2013 to 41.2 million?</p> <p>9 A. Yes.</p> <p>10 Q. Increased to 45.8 million as of the</p> <p>11 end of 2014?</p> <p>12 A. Yes, I see.</p> <p>13 Q. And then it was still around</p> <p>14 \$48 million in 2015 and 2016?</p> <p>15 A. I see that, yes.</p> <p>16 Q. And in most of those years, the excess</p> <p>17 funds were enough to cover an entire year's</p> <p>18 worth of ADM Board expenses, correct?</p> <p>19 A. Most of those years. Well, by the</p> <p>20 time you get to 2013, the ending cash balance is</p> <p>21 about the same as the annual total expenditures.</p> <p>22 Q. Did the Summit ADM Board ever seek</p> <p>23 authorization to spend the extra funds that are</p> <p>24 reflected in the ending cash balance?</p>

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<p style="text-align: right;">Page 342</p> <p>1 A. I'm not sure.</p> <p>2 Q. Did you look into that?</p> <p>3 A. My staff may have. I don't recall</p> <p>4 looking into it myself.</p> <p>5 Q. Do you know whether there was a</p> <p>6 requirement for the fund balance for the Summit</p> <p>7 ADM Board?</p> <p>8 A. I'm not aware of any.</p> <p>9 Q. Do you know whether there was any</p> <p>10 requirement at all, separate from what that</p> <p>11 requirement level was?</p> <p>12 A. I'm not aware of the existence of one.</p> <p>13 Q. So the ending cash balance identifies</p> <p>14 the amount of money that was available to the</p> <p>15 ADM Board to spend on other things if it wanted</p> <p>16 to do so, correct?</p> <p>17 A. Well, I'm not familiar with whatever</p> <p>18 budget rules they have, but broadly speaking,</p> <p>19 something like that would be correct.</p> <p>20 Q. Can you go back to McGuire Exhibit 3,</p> <p>21 which is the operating budget for 2017 for</p> <p>22 Summit County?</p> <p>23 A. Okay.</p> <p>24 Q. And would you turn to page</p>	<p style="text-align: right;">Page 344</p> <p>1 A. I'm looking at that.</p> <p>2 Q. And if you look in the column that</p> <p>3 says "2017 Actual."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And if you go to the -- close to the</p> <p>7 bottom it shows "Total Expenditures"?</p> <p>8 A. I see that.</p> <p>9 Q. What are the total expenditures by the</p> <p>10 Summit ADM Board in 2017?</p> <p>11 A. 45,430,368.</p> <p>12 Q. Okay. So that's less than the amount</p> <p>13 that it was authorized to spend in 2017,</p> <p>14 correct?</p> <p>15 A. It appears to be.</p> <p>16 Q. By about \$2.3 million?</p> <p>17 A. It appears to be.</p> <p>18 Q. So in 2017, the Summit ADM Board</p> <p>19 didn't even spend \$2.3 million that it was</p> <p>20 authorized to spend on needs that it was charged</p> <p>21 with addressing, correct?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 A. Well, I think the arithmetic here is</p> <p>24 all perfectly fine. Interpreting it in terms of</p>
<p style="text-align: right;">Page 343</p> <p>1 SUMMIT_7600? Are you there?</p> <p>2 A. I'm there.</p> <p>3 Q. And the title of this page that's part</p> <p>4 of the budget is "County of Summit 2017 Budget</p> <p>5 Total Expenditures."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. And it lists a series of funds, and</p> <p>9 for each fund it shows what the adopted budget</p> <p>10 is for 2017?</p> <p>11 A. I see that.</p> <p>12 Q. And do you see that there's a specific</p> <p>13 line that shows the 2017 adopted budget for the</p> <p>14 Alcohol, Drug & Mental Health Board for Summit</p> <p>15 County?</p> <p>16 A. I see that.</p> <p>17 Q. And what's the amount that the Summit</p> <p>18 County ADM Board could spend per the 2017</p> <p>19 adopted budget?</p> <p>20 A. According to this document, the entry</p> <p>21 is \$47,729,340.</p> <p>22 Q. Can you go back to McGuire Exhibit 4</p> <p>23 which shows the actual expenditures for the</p> <p>24 Summit County ADM Board?</p>	<p style="text-align: right;">Page 345</p> <p>1 their behavior and so on, I'm not sure.</p> <p>2 BY MR. KEYES:</p> <p>3 Q. Well, it doesn't require any</p> <p>4 interpretation of the behavior.</p> <p>5 It shows that they were authorized to</p> <p>6 spend 47.7 million, they only spent</p> <p>7 45.4 million, which leaves 2.3 million, roughly,</p> <p>8 in monies that were specifically authorized, put</p> <p>9 into their budget that the ADM Board did not</p> <p>10 spend that year, correct?</p> <p>11 A. The gap between the budget and the</p> <p>12 expenditures is, as you described, around</p> <p>13 \$2 million.</p> <p>14 Q. So these are dollars that the Summit</p> <p>15 ADM Board could have spent on another need, but</p> <p>16 didn't for whatever reason?</p> <p>17 MR. SOBOL: Objection.</p> <p>18 A. Well, that would be an assumption. I</p> <p>19 don't know that for sure.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. Going back to McGuire Exhibit</p> <p>22 Number 3, same page. What did the Summit County</p> <p>23 adopt as the 2017 budget for the Children's</p> <p>24 Services Board?</p>

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<p>1 A. This is 51,914,589.</p> <p>2 (Whereupon, McGuire Exhibit Number 5</p> <p>3 was marked for identification.)</p> <p>4 BY MR. KEYES:</p> <p>5 Q. Showing you what has been marked as</p> <p>6 McGuire Exhibit 5. What is McGuire Exhibit 5?</p> <p>7 A. It's the Summit County Children's</p> <p>8 Services Operating Forecast as of December 31,</p> <p>9 2018.</p> <p>10 Q. And it's Bates number</p> <p>11 SUMMIT_002057610, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And does it show the actual</p> <p>14 expenditures for the Summit County Children's</p> <p>15 Services Board in 2017?</p> <p>16 A. It appears to, yes.</p> <p>17 Q. And what is that amount for 2017?</p> <p>18 A. That amount is 47,960,000.</p> <p>19 Q. Whereas it was authorized to spend in</p> <p>20 2017 51.9 million, it only spent 47.9 million,</p> <p>21 correct?</p> <p>22 A. Well, this is -- yeah, this is what</p> <p>23 was budgeted. I'm just looking at the documents</p> <p>24 and confirming what they appear to be.</p>	<p>1 to see whether any of the so-called affected</p> <p>2 divisions had monies that were approved to spend</p> <p>3 in a particular year that they did not spend?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 A. This is another version of the -- what</p> <p>6 I need to do in order to address my assignment.</p> <p>7 These funds that are the ending balance carrying</p> <p>8 forward can be used for other services as you</p> <p>9 established, I think, in your preface to these</p> <p>10 set of questions. They could be used for other</p> <p>11 services next year or the year after that.</p> <p>12 What is the value of those other</p> <p>13 services? A good measure of that is the</p> <p>14 dollars. So anything that takes away from or</p> <p>15 diverts funds from other categories, including</p> <p>16 the operating surplus or deficit, is measured by</p> <p>17 opportunity cost.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. Even if the ADM Board or the</p> <p>20 Children's Services Board had additional dollars</p> <p>21 available to it and did not spend them?</p> <p>22 A. Well, I think the --</p> <p>23 MR. SOBOL: Objection.</p> <p>24 A. No, I'll just disagree with that.</p>
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<p>1 Q. Right.</p> <p>2 So one is the amount that it was</p> <p>3 budgeted to spend for 2017, the other shows what</p> <p>4 it actually spent in 2017, right?</p> <p>5 A. That's true.</p> <p>6 You know, we haven't talked about the</p> <p>7 revenues. And in 2017, for example, the</p> <p>8 Children's Services was running a deficit, and</p> <p>9 I, you know, don't know without more</p> <p>10 investigation whether the presence of that</p> <p>11 deficit would have led to spending more than it</p> <p>12 was budgeted.</p> <p>13 Q. But comparing what it was authorized</p> <p>14 to spend in the budget versus what it actually</p> <p>15 spent in 2017, it did not spend roughly</p> <p>16 \$3.9 million that it was authorized to spend on</p> <p>17 the needs it was charged with addressing,</p> <p>18 correct?</p> <p>19 A. Well, I don't know that for sure.</p> <p>20 This is budgeted. I'm not sure what may have</p> <p>21 been authorized, what contingencies there might</p> <p>22 have been on revenue with respect to that, so I</p> <p>23 can only answer about what I see before me.</p> <p>24 Q. Did you look into this kind of issue</p>	<p>1 BY MR. KEYES:</p> <p>2 Q. On what basis?</p> <p>3 A. It's not a sound economic -- not sound</p> <p>4 economic logic. These funds have other</p> <p>5 purposes, other potential uses.</p> <p>6 Q. Aren't you positing that the dollars</p> <p>7 that you've quantified as damages have an</p> <p>8 opportunity cost because by being spent on</p> <p>9 opioid-related services they were not available</p> <p>10 to be spent on something else?</p> <p>11 MR. SOBOL: Objection. Form.</p> <p>12 A. Well, broadly speaking, there was the</p> <p>13 diversion part, and any increase in spending</p> <p>14 part due to the opioid crisis that would have</p> <p>15 fed into the opportunity cost accounting.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. So what basis do you have in fact for</p> <p>18 positing that if those dollars were not spent on</p> <p>19 opioid-related services, they, in fact, would</p> <p>20 have been spent on something else when the</p> <p>21 evidence we have is that these boards didn't</p> <p>22 even spend the dollars they had?</p> <p>23 A. Well, you're looking at a bunch of</p> <p>24 categories that have to add up in the way that</p>

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<p style="text-align: right;">Page 350</p> <p>1 we've been discussing. Could I say that if</p> <p>2 whatever opioid-related expenditures were not</p> <p>3 here, I would know that other would go up, or</p> <p>4 paid placements would go up, or any of these</p> <p>5 individual categories would change in any way,</p> <p>6 including the last one we've been talking about,</p> <p>7 which you have to consider that to be a change</p> <p>8 in fund balance which is what might be affected</p> <p>9 by any spending on opioids.</p> <p>10 And the whole kind of emphasis of some</p> <p>11 of our discussions earlier was that it's not</p> <p>12 necessary for me to be able to determine where</p> <p>13 that money came from in order to attribute the</p> <p>14 opportunity cost of how the dollars I do.</p> <p>15 Q. Do you agree a carry-forward balance</p> <p>16 is fairly characterized as a surplus?</p> <p>17 A. It sometimes -- at least in this</p> <p>18 document the surplus is more of an annual flow</p> <p>19 concept, whereas the balance is a stock concept.</p> <p>20 But I'm not sure what you're then asking.</p> <p>21 Q. My question is, when it refers to the</p> <p>22 ending carry-forward balance here for Summit</p> <p>23 County Children's Services in McGuire Exhibit 5,</p> <p>24 could that fairly be characterized as a surplus</p>	<p style="text-align: right;">Page 352</p> <p>1 sorry.</p> <p>2 Q. I asked you earlier whether you had</p> <p>3 ever testified using a theory of calculating</p> <p>4 damages where internal costs were provable as</p> <p>5 damages.</p> <p>6 Do you remember that?</p> <p>7 A. I don't remember the internal word,</p> <p>8 but I do remember the general nature of the</p> <p>9 question.</p> <p>10 Q. And I think you responded that those</p> <p>11 internal costs were similar, in your words, to</p> <p>12 an increased purchase price.</p> <p>13 A. I actually don't recall this, what I</p> <p>14 was saying about that, so I'm sorry.</p> <p>15 Q. Okay. Well, have you ever testified</p> <p>16 as an expert in a case where you have quantified</p> <p>17 damages as being the opportunity costs</p> <p>18 associated with the expenditures of a</p> <p>19 municipality?</p> <p>20 A. Possibly. And what I mean by that is</p> <p>21 there have been cases in which purchasers are</p> <p>22 sometimes labor funds and may have been</p> <p>23 government self-insured healthcare costs, but I</p> <p>24 can't be sure.</p>
<p style="text-align: right;">Page 351</p> <p>1 that existed as of year-end each year?</p> <p>2 A. If you define "surplus" to be the</p> <p>3 balance, this exhibit doesn't seem to use the</p> <p>4 term that way. But I understand what you're</p> <p>5 asking.</p> <p>6 Q. So what's the answer? You said you</p> <p>7 understand what I'm asking. Could the</p> <p>8 carry-forward balance shown on McGuire Exhibit 5</p> <p>9 be fairly characterized as a surplus that the</p> <p>10 Summit County Children's Services had?</p> <p>11 A. That's not the way the term is used in</p> <p>12 this document.</p> <p>13 Q. Did you look at any deposition</p> <p>14 testimony from anyone who worked for Summit</p> <p>15 County Children's Services about the ending</p> <p>16 carry-forward balance?</p> <p>17 A. Oh, I don't remember.</p> <p>18 Q. And do you know what anyone who</p> <p>19 actually worked for Summit County Children's</p> <p>20 Services said about how the carry-forward</p> <p>21 balance could be characterized?</p> <p>22 A. I don't remember.</p> <p>23 Q. Did you look?</p> <p>24 A. I don't remember that either. I'm</p>	<p style="text-align: right;">Page 353</p> <p>1 Q. You say it may be. If you did, what</p> <p>2 case or cases would that have been in?</p> <p>3 A. That's what I can't tell you.</p> <p>4 Q. So sitting here today, can you</p> <p>5 identify any case where you've said that?</p> <p>6 MR. SOBOL: Objection.</p> <p>7 A. I can't tell you which case this would</p> <p>8 have come up. I just don't remember.</p> <p>9 BY MR. KEYES:</p> <p>10 Q. Have you ever testified as an expert</p> <p>11 where you claim that the internal compensation</p> <p>12 costs of a municipality or a company were</p> <p>13 claimed as damages as distinguished from</p> <p>14 payments to an outside party?</p> <p>15 A. Compensation costs are normally</p> <p>16 considered to be wages and benefits, and the</p> <p>17 degree to which this government entity, that I'm</p> <p>18 not remembering the details about, was paying</p> <p>19 for healthcare, that would be part of a</p> <p>20 compensation to the workers. So in that sense,</p> <p>21 yes.</p> <p>22 Q. Did you treat those compensation costs</p> <p>23 as damages?</p> <p>24 A. They would have been spending -- extra</p>

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<p style="text-align: right;">Page 354</p> <p>1 healthcare spending due to whatever it was, and 2 that would have been damages, yes. 3 Q. And were those dollars paid to the 4 employees or paid to third parties in connection 5 with employees? 6 A. They would have been paid to third 7 parties. 8 Q. Okay. So my question was about 9 internal compensation costs where you are paying 10 your own employees. 11 Have you ever testified as an expert 12 where those internal compensation costs, what 13 you're paying to employees, is claimed as 14 damages? 15 A. I have to ask you to clarify. By 16 "internal compensation cost," do you mean wages 17 only, or do you mean something else? 18 Q. Well, I mean any compensation paid to 19 employees. 20 A. Any compensation, so it includes 21 employer contribution to health insurance 22 premiums? 23 Q. Paid to employees, any compensation 24 paid to employees, not paid to third parties on</p>	<p style="text-align: right;">Page 356</p> <p>1 BY MR. KEYES: 2 Q. Either the insurer or the employee. 3 A. It would be very unlikely to the 4 employee. Modern health insurance doesn't work 5 that way. 6 Q. Okay. Do you know what Summit County 7 does? 8 A. I do know some things about what 9 Summit County does. 10 Q. Okay. So tell me what it does. 11 A. There's more than one plan that 12 applies to employees in Summit County, and some 13 of the plans change over time, sometimes 14 different groups of workers. Some of those, I 15 think the largest bulk of those would be 16 considered to be self-insured, in which most of 17 the risk would have been borne by the employer, 18 in this case the city government. 19 When you say self-insured, though, 20 it's not a clean yes, they bear the risk versus 21 insured, no, they don't bear the risk. It's 22 typical that there's some risk-sharing between a 23 third-party administrator and the government in 24 this case.</p>
<p style="text-align: right;">Page 355</p> <p>1 behalf of employees. 2 A. I can't think of anything. But this 3 gets to be a little bit of a gray area about 4 employer payments that have to do with 5 healthcare costs that take the form of extra 6 compensation for workers, so I'll leave it at 7 that. 8 Q. So your recollection is fuzzy as to 9 whether you've ever done this before? 10 A. I think fuzzy would be a perfectly 11 good word to characterize my recollection here. 12 This is something I may have done, but I can't 13 point to particular examples. 14 Q. Does Summit County pay reimbursements 15 for prescription opioids through their 16 healthcare plans for county employees? 17 A. Can you read me that again, please? 18 Q. Sure. 19 Does Summit County pay reimbursements 20 for prescription opioids through their 21 healthcare plans for county employees? 22 MR. SOBOL: Sorry. Objection. 23 Go ahead. 24 A. Reimbursements to whom?</p>	<p style="text-align: right;">Page 357</p> <p>1 So what all this means is that the 2 county government would be on the hook for and 3 pay part of healthcare costs on behalf of its 4 workers. I guess in that case reimbursement is 5 a little bit of a funny word, but they would be 6 paying healthcare costs on behalf of their 7 workers. 8 Q. Do you calculate as alleged damages in 9 this case any of those payments? 10 A. I believe that this is part of 11 compensation from the standpoint of the 12 counties, and the degree to which health 13 insurance costs were included in compensation 14 for the portion of workers that are not set 15 aside by the overhead adjustment, yes, I do. 16 Q. So where would we find that in your 17 work product? 18 A. It would be under compensation. 19 There's wages and salaries and there's other 20 categories, and in the other category. 21 Q. Okay. And is the same true for 22 Cuyahoga County or not? 23 A. The same would be true, yeah. 24 Q. So for both Summit County and Cuyahoga</p>

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<p>1 County, to the extent that either of the</p> <p>2 counties is making payments in connection with</p> <p>3 prescription opioids written to county</p> <p>4 employees, those expenses are included in your</p> <p>5 calculations as non-overhead affected costs, and</p> <p>6 they are included in your damages?</p> <p>7 A. Yes, for employees that are in the</p> <p>8 variable cost category, I examine their</p> <p>9 compensation package, which is wages plus</p> <p>10 benefits, and health insurance costs are</p> <p>11 comprehensive and include prescriptions for the</p> <p>12 workers.</p> <p>13 Q. What about payments made by Summit</p> <p>14 County or Cuyahoga County on behalf of injured</p> <p>15 workers that are attributable to opioids?</p> <p>16 A. You're asking about the health</p> <p>17 insurance payments in this context?</p> <p>18 Q. Well, I'm trying to be broad to make</p> <p>19 sure I cover it. Yes.</p> <p>20 A. I'm sorry, so ask me again, please?</p> <p>21 Q. Well, I'm asking about health</p> <p>22 insurance payments made by Summit County or</p> <p>23 Cuyahoga County on behalf of injured workers</p> <p>24 that are attributable to opioids, are those</p>	<p>1 do you think you should do? Should it be</p> <p>2 included in your total damages, or excluded?</p> <p>3 A. It probably depends on the context and</p> <p>4 the division. If it's reasonable to believe</p> <p>5 that some of the on-the-job injuries are part of</p> <p>6 the normal course of work, then probably it</p> <p>7 should be included. But truthfully, I would</p> <p>8 have to go back and try to reconstruct what I</p> <p>9 did in that case.</p> <p>10 Q. Okay. But again, to be clear, I'm not</p> <p>11 asking what you did before. I realize you don't</p> <p>12 remember that.</p> <p>13 Sitting here today, as you approach it</p> <p>14 as a specific example of figuring out whether</p> <p>15 something is an affected cost or not, whether</p> <p>16 it's an overhead cost or not, how do you think</p> <p>17 you treated these payments? How do you think</p> <p>18 you should treat these payments?</p> <p>19 A. Well, I should make a judgment about</p> <p>20 whether they belong in one category or the</p> <p>21 other. I'm not --</p> <p>22 Q. So what judgment do you think you</p> <p>23 should draw today?</p> <p>24 A. Well, I said it would probably depend</p>
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<p>1 included in your calculations?</p> <p>2 A. I would have to check to see if the</p> <p>3 workers' comp costs are included in the variable</p> <p>4 category, and I don't remember. But it's in my</p> <p>5 material. We could figure that out if we wanted</p> <p>6 to. If it is, then I would again -- the</p> <p>7 workers' comp costs include health insurance</p> <p>8 costs, so they would be included.</p> <p>9 Q. Sitting here today, do you think you</p> <p>10 included it as an affected non-overhead cost or</p> <p>11 not?</p> <p>12 A. I don't remember.</p> <p>13 Q. Well --</p> <p>14 A. Sorry.</p> <p>15 Q. You don't remember what you did, but</p> <p>16 I'm asking you, sitting here today, as you</p> <p>17 approach it, what do you think you should do?</p> <p>18 MR. SOBOL: Objection.</p> <p>19 He said he didn't remember.</p> <p>20 MR. KEYES: I understand he doesn't</p> <p>21 remember what he did.</p> <p>22 BY MR. KEYES:</p> <p>23 Q. I'm not asking about what you did.</p> <p>24 I'm asking, sitting here today, what</p>	<p>1 on the division and whether I thought it was</p> <p>2 likely that the workers' comp costs were part of</p> <p>3 what workers might be exposed to in the normal</p> <p>4 course of their work.</p> <p>5 Q. That's the criteria you would use?</p> <p>6 A. That's the criteria I would use.</p> <p>7 Q. Who are the manufacturer defendants in</p> <p>8 this case?</p> <p>9 MR. SOBOL: Off the top of his head?</p> <p>10 A. Off the top of my head, I know Teva,</p> <p>11 Mallinckrodt, Purdue, Endo. I'm sure there are</p> <p>12 others. I don't want to make a slur on some</p> <p>13 manufacturer's name if I'm not sure.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. Do you identify the manufacturer</p> <p>16 defendants --</p> <p>17 MR. SOBOL: Is this deposition</p> <p>18 transcript confidential?</p> <p>19 MR. KEYES: I have not designated it</p> <p>20 so, no.</p> <p>21 MR. SOBOL: Okay. So don't slur</p> <p>22 anybody then.</p> <p>23 THE WITNESS: That's what I thought I</p> <p>24 should do.</p>

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<p style="text-align: right;">Page 362</p> <p>1 BY MR. KEYES:</p> <p>2 Q. Do you identify in your damages report</p> <p>3 who the manufacturer defendants are?</p> <p>4 A. I don't think I do.</p> <p>5 Q. Do you identify in your damages report</p> <p>6 who the distributor defendants are?</p> <p>7 A. I don't think I do that either.</p> <p>8 Q. Or any of the retail pharmacy</p> <p>9 defendants?</p> <p>10 A. Same answer.</p> <p>11 Q. Okay. Are any of your analyses set</p> <p>12 forth in your damages report defendant-specific?</p> <p>13 MR. SOBOL: Objection. Asked and</p> <p>14 answered.</p> <p>15 A. No, in the sense that the damages I</p> <p>16 estimate are in total those due to defendants'</p> <p>17 misconduct, defendants', plural, misconduct.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. And what is the misconduct by the</p> <p>20 manufacturing defendants?</p> <p>21 A. The component of misconduct that</p> <p>22 Rosenthal studies in her report is misleading is</p> <p>23 advertising, but there's more to it than that.</p> <p>24 Q. Your understanding is that what</p>	<p style="text-align: right;">Page 364</p> <p>1 BY MR. KEYES:</p> <p>2 Q. Well, does she identify a particular</p> <p>3 promotion by particular manufacturing defendants</p> <p>4 that she says was unlawful?</p> <p>5 A. She is able to identify particular</p> <p>6 defendants' detailing activities, which I</p> <p>7 understand she makes a determination, I believe,</p> <p>8 on the basis of counsel instructions of whether</p> <p>9 that is misconduct.</p> <p>10 Q. Does she identify a subset of the</p> <p>11 promotion by the manufacturing defendants that</p> <p>12 she assumes is or concludes is unlawful?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 A. My understanding is that she -- in</p> <p>15 relating the total volume of detailing visits to</p> <p>16 shipments, on instruction from counsel,</p> <p>17 Professor Rosenthal attributes that portion of</p> <p>18 shipments to defendants' misconduct. That</p> <p>19 probably wasn't very clear.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. I'd like to know your understanding.</p> <p>22 Does she say that all promotion by the</p> <p>23 manufacturing defendants was unlawful, most of</p> <p>24 it, some of it, a particular type of promotion</p>
<p style="text-align: right;">Page 363</p> <p>1 Professor Rosenthal is measuring as the</p> <p>2 manufacturers' misconduct is misleading</p> <p>3 advertising?</p> <p>4 A. Well, yes, that's what I understand to</p> <p>5 be the case.</p> <p>6 Q. What is your basis for that</p> <p>7 understanding?</p> <p>8 A. My familiarity with the Rosenthal</p> <p>9 report.</p> <p>10 Q. And what do you mean by "advertising"?</p> <p>11 A. What Rosenthal does is count detailing</p> <p>12 visits.</p> <p>13 Q. What is detailing?</p> <p>14 A. Detailing is a practice by which sales</p> <p>15 reps from drug manufacturers pay face-to-face</p> <p>16 visits to doctors' offices and help inform and</p> <p>17 persuade physicians to use their employer's</p> <p>18 product.</p> <p>19 Q. And what does Professor Rosenthal</p> <p>20 assume about that detailing or promotion?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 A. Well, there's a set of things. Not</p> <p>23 sure what -- where you want me to go off and</p> <p>24 talk here.</p>	<p style="text-align: right;">Page 365</p> <p>1 was unlawful? What is your understanding of</p> <p>2 what she assumes for purposes of her analyses?</p> <p>3 A. My understanding is what she assumes</p> <p>4 on the basis of what I believe to be instruction</p> <p>5 from counsel is that all her measured</p> <p>6 advertising activities are misconduct --</p> <p>7 represent misconduct.</p> <p>8 Q. All measured advertising activities?</p> <p>9 A. Detailing visits.</p> <p>10 Q. Right.</p> <p>11 So does she assume that for purposes</p> <p>12 of conducting her analysis all or virtually all</p> <p>13 promotion by the manufacturer defendants from</p> <p>14 1995 to the present was unlawful?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 A. My understanding is that she was asked</p> <p>17 to assume that.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. And because your opinions and your</p> <p>20 quantification of damages relies on Rosenthal's</p> <p>21 conclusions, your opinions also rely on that</p> <p>22 assumption, correct?</p> <p>23 MR. SOBOL: Objection.</p> <p>24 A. The particular damages numbers that I</p>

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<p>1 present in my report depend on the results of</p> <p>2 both Professor Rosenthal and Cutler's work.</p> <p>3 BY MR. KEYES:</p> <p>4 Q. And, therefore, your particular</p> <p>5 damages numbers that you present in your report</p> <p>6 depend on the assumptions that Professor</p> <p>7 Rosenthal and Professor Cutler make in doing</p> <p>8 their work, correct?</p> <p>9 A. All the things that feed into their</p> <p>10 conclusions in some sense I depend on.</p> <p>11 Q. But I was asking specifically about</p> <p>12 assumptions.</p> <p>13 Your particular damages numbers that</p> <p>14 you present in your report depend on the</p> <p>15 assumptions that Professor Rosenthal and</p> <p>16 Professor Cutler make in doing their work,</p> <p>17 correct?</p> <p>18 MR. SOBOL: Objection.</p> <p>19 A. That's a little too broad to give a</p> <p>20 yes answer to, but a number of their assumptions</p> <p>21 that underlie their empirical work would</p> <p>22 influence their empirical estimates which would</p> <p>23 then feed into affecting my damages.</p> <p>24 BY MR. KEYES:</p>	<p>1 were an assumption that affected their</p> <p>2 estimates, then it would feed through and affect</p> <p>3 my quantification.</p> <p>4 Q. So now can you identify for me</p> <p>5 assumptions that either Professor Rosenthal or</p> <p>6 Professor Cutler made that did not affect their</p> <p>7 empirical results?</p> <p>8 MR. SOBOL: Same objection as</p> <p>9 previously when the question was asked.</p> <p>10 A. There probably are some. I don't have</p> <p>11 any off the top of my head.</p> <p>12 BY MR. KEYES:</p> <p>13 Q. Can you identify a single one, a</p> <p>14 single assumption they made in their work that</p> <p>15 does not affect their empirical work?</p> <p>16 MR. SOBOL: Objection. Same objection</p> <p>17 as previously.</p> <p>18 A. That's not quite the same question,</p> <p>19 but nothing occurs to me.</p> <p>20 BY MR. KEYES:</p> <p>21 Q. Can you identify a single assumption</p> <p>22 that Professor Rosenthal or Professor Cutler</p> <p>23 made in their work that does not affect their</p> <p>24 empirical results?</p>
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<p>1 Q. What assumptions do Professor</p> <p>2 Rosenthal and Professor Cutler make in doing</p> <p>3 their work that do not impact your damages</p> <p>4 quantification?</p> <p>5 MR. SOBOL: Objection. Scope.</p> <p>6 He doesn't have the reports in front</p> <p>7 of him.</p> <p>8 A. I would have to -- I think it might</p> <p>9 help or it might not give me an answer to this.</p> <p>10 I was just kind of noting that your original</p> <p>11 question was too broad, that there's a number of</p> <p>12 assumptions that are made in the report that</p> <p>13 don't affect the empirical results, and I didn't</p> <p>14 want to say that every assumption that Meredith</p> <p>15 Rosenthal or Cutler makes would affect their</p> <p>16 results. That's all I'm saying.</p> <p>17 Q. Professor Rosenthal and</p> <p>18 Professor Cutler did make assumptions that do</p> <p>19 affect their empirical results, correct?</p> <p>20 A. I agree with that.</p> <p>21 Q. Those assumptions also have an impact</p> <p>22 on the damages quantification that you did,</p> <p>23 correct?</p> <p>24 A. That would be correct. So if there</p>	<p>1 MR. SOBOL: Objection. Same objection</p> <p>2 as before.</p> <p>3 A. Same answer.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. Have you done any independent</p> <p>6 examination of the opioid manufacturer</p> <p>7 defendants' marketing?</p> <p>8 A. I'm familiar with material in this</p> <p>9 case that plays into my public nuisance report.</p> <p>10 Q. But I'm asking about whether you've</p> <p>11 done any examination, not just familiarity.</p> <p>12 Have you studied or examined the</p> <p>13 opioid manufacturer defendants' marketing?</p> <p>14 MR. SOBOL: Objection.</p> <p>15 A. I've examined. That seems to be -- to</p> <p>16 me to be studied.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. And you did that in connection with</p> <p>19 your nuisance report?</p> <p>20 A. Yes.</p> <p>21 Q. Did you do any examination of the</p> <p>22 opioid manufacturer defendants' marketing in</p> <p>23 connection with your damages report?</p> <p>24 A. No, I don't think so.</p>

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<p>1 Q. Did you do any examination of the</p> <p>2 opioid manufacturer defendants' promotion in</p> <p>3 connection with your damages report?</p> <p>4 A. No, I don't think so. That's a</p> <p>5 Rosenthal thing.</p> <p>6 Q. Did you do any examination of the</p> <p>7 opioid manufacturers' detailing in connection</p> <p>8 with your damages report?</p> <p>9 A. That's also the Rosenthal thing.</p> <p>10 Q. Is that a no?</p> <p>11 A. That's I didn't do it. Progress.</p> <p>12 Q. Do you believe that all of the</p> <p>13 promotion conducted by manufacturer defendants</p> <p>14 is false?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 A. I didn't study it.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. So do you have that belief or not?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 A. I don't know.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. Do you believe that all of the</p> <p>23 promotion conducted by the manufacturer</p> <p>24 defendants was unlawful?</p>	<p>1 Q. For purposes of your damages report,</p> <p>2 have you analyzed how your calculations would</p> <p>3 change if, in fact, the defendant manufacturers</p> <p>4 had marketed their products in a lawful way?</p> <p>5 MR. SOBOL: Objection.</p> <p>6 A. This is something that would be -- let</p> <p>7 me take an example, I think, of what you're</p> <p>8 asking about.</p> <p>9 Suppose one manufacturer were</p> <p>10 determined to be completely lawful, and those</p> <p>11 detailing visits were then not deemed to be</p> <p>12 inappropriate, that's something that Professor</p> <p>13 Rosenthal could readily calculate, and then the</p> <p>14 proportionality of that affect would flow</p> <p>15 through Cutler and would flow through to my</p> <p>16 damages report. So it's something that the</p> <p>17 methodology is capable of doing.</p> <p>18 BY MR. KEYES:</p> <p>19 Q. Has Professor Rosenthal done that?</p> <p>20 A. She's done some analysis of the affect</p> <p>21 on share of shipments attributable to misconduct</p> <p>22 under assumptions of different compositions in</p> <p>23 the defendant pool, so yes, I think she has.</p> <p>24 Q. You said that's something she could</p>
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<p>1 MR. SOBOL: Objection.</p> <p>2 A. As we -- as you established a few</p> <p>3 moments ago, I didn't study it.</p> <p>4 BY MR. KEYES:</p> <p>5 Q. In connection with your work on your</p> <p>6 nuisance report, do you believe all of the</p> <p>7 promotion conducted by manufacturer defendants</p> <p>8 was false?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 A. I don't need that belief in the sense</p> <p>11 of to be -- it wasn't necessary for me to come</p> <p>12 to a judgment that 100 percent of the</p> <p>13 advertising was false.</p> <p>14 BY MR. KEYES:</p> <p>15 Q. In connection with your work on your</p> <p>16 nuisance report, do you believe that all of the</p> <p>17 promotion conducted by manufacturer defendants</p> <p>18 was unlawful?</p> <p>19 MR. SOBOL: Objection. Asked and</p> <p>20 answered.</p> <p>21 A. I didn't need to come to a</p> <p>22 determination of that. It wasn't part of my</p> <p>23 assignment, for one thing.</p> <p>24 BY MR. KEYES:</p>	<p>1 do. So has she performed calculations on the</p> <p>2 assumption that one manufacturer's conduct was</p> <p>3 completely lawful and the detailing visits were</p> <p>4 not deemed to be inappropriate?</p> <p>5 A. I believe she has, yes.</p> <p>6 Q. Okay. For which manufacturer?</p> <p>7 A. She did it for a series of them.</p> <p>8 Q. Okay. And have you seen that in her</p> <p>9 report?</p> <p>10 A. I have.</p> <p>11 Q. Your work in your report relies on the</p> <p>12 work of Professor Rosenthal and Professor</p> <p>13 Cutler, correct?</p> <p>14 A. That's correct.</p> <p>15 MR. SOBOL: Object.</p> <p>16 BY MR. KEYES:</p> <p>17 Q. So before --</p> <p>18 MR. SOBOL: I'm getting a little slow</p> <p>19 here, but objection, asked and answered.</p> <p>20 Go ahead.</p> <p>21 BY MR. KEYES:</p> <p>22 Q. So before you issued your damages</p> <p>23 report on March 25th, how did you know what</p> <p>24 Professor Cutler's work was, and how did you</p>

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<p>1 know what Professor Rosenthal's work was?</p> <p>2 A. Well, we all needed one another.</p> <p>3 David needed to know -- David Cutler needed to</p> <p>4 know which divisions were likely to be affected</p> <p>5 by opioids, so I had to tell him that. I had to</p> <p>6 tell him that ahead of March 25. And then so I</p> <p>7 could do my work, he needed to tell me what the</p> <p>8 content of essentially the Excel spreadsheets</p> <p>9 where there's a share of harms associated with</p> <p>10 misconduct, what those numbers would look like.</p> <p>11 And then we could do the rest of our reports</p> <p>12 sort of on our own.</p> <p>13 Q. So how did you communicate to</p> <p>14 Professor Cutler which divisions were affected?</p> <p>15 A. I let counsel know what I'm going to</p> <p>16 be saying about that, and then they told David.</p> <p>17 Q. Did you share a draft of your</p> <p>18 conclusions and your discussion about which</p> <p>19 divisions were affected with Professor Cutler?</p> <p>20 MR. SOBOL: I thought that drafts were</p> <p>21 off limits in this case.</p> <p>22 MR. HALLER: Not if Cutler is relying</p> <p>23 on it.</p> <p>24 MR. SOBOL: But Cutler identifies what</p>	<p>1 divisions were affected. He learned it from</p> <p>2 you?</p> <p>3 A. That's correct.</p> <p>4 Q. So did you send him a draft report or</p> <p>5 a draft discussion that identified which</p> <p>6 divisions were affected?</p> <p>7 MR. SOBOL: Same instruction.</p> <p>8 MR. KEYES: Even though he's just said</p> <p>9 that Professor Cutler relied on it?</p> <p>10 MR. SOBOL: He doesn't know what</p> <p>11 Professor Cutler relied on or not. Professor</p> <p>12 Cutler knows what he relied upon. And I've read</p> <p>13 Professor Cutler's report, and Professor</p> <p>14 Cutler's report has materials that he</p> <p>15 considered, and there's no draft of McGuire</p> <p>16 report in there.</p> <p>17 MR. KEYES: Well, with respect, you're</p> <p>18 not the witness, you're not the expert, and what</p> <p>19 you believe is irrelevant, given that Professor</p> <p>20 McGuire, who is the expert and is the witness,</p> <p>21 just said that he understands that Professor</p> <p>22 Cutler relied on his determination of which</p> <p>23 divisions were affected.</p> <p>24 BY MR. KEYES:</p>
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<p>1 he relies upon in his report, and there's no</p> <p>2 draft he identifies as relying on in his report.</p> <p>3 MR. KEYES: I'm asking the question</p> <p>4 what was shared. I'm not even asking for a copy</p> <p>5 of it at this point.</p> <p>6 MR. SOBOL: I'm going to instruct him</p> <p>7 not to answer until I know better, and we'll</p> <p>8 reserve until the next time.</p> <p>9 BY MR. KEYES:</p> <p>10 Q. Well, to be clear, did you share a</p> <p>11 draft of your conclusions and your discussion</p> <p>12 about which divisions were affected with</p> <p>13 Professor Cutler?</p> <p>14 MR. SOBOL: Yes, I'm instructing him</p> <p>15 not to answer until I have a better clarity</p> <p>16 where this line gets drawn.</p> <p>17 BY MR. KEYES:</p> <p>18 Q. Well, you said Professor Cutler relied</p> <p>19 on your determination of which divisions were</p> <p>20 affected, to use your terminology, right?</p> <p>21 A. I said something like that, yes.</p> <p>22 Q. Okay. So if Professor Cutler is</p> <p>23 relying on your determination of which divisions</p> <p>24 are affected, I need to know how he learned what</p>	<p>1 Q. So given your testimony, Professor</p> <p>2 McGuire, that you did something that Professor</p> <p>3 Cutler relied on, I'd like to know, did you send</p> <p>4 him a draft or some discussion relating to which</p> <p>5 divisions were affected to Professor Cutler so</p> <p>6 that he could do the work he said depended on</p> <p>7 it?</p> <p>8 MR. SOBOL: To the extent the question</p> <p>9 asks about whether you sent him a draft, I</p> <p>10 instruct you not to answer. To the extent that</p> <p>11 it asks differently as to whether or not you had</p> <p>12 a discussion with him, you may answer yes or no</p> <p>13 BY MR. KEYES:</p> <p>14 Q. How did you communicate to</p> <p>15 Professor Cutler your analysis and your findings</p> <p>16 about which divisions were affected?</p> <p>17 MR. SOBOL: I instruct you not to</p> <p>18 answer if it's by way of a draft.</p> <p>19 A. It was a very simple list of nine and</p> <p>20 ten divisions in two different counties. It</p> <p>21 didn't require a lot of prose backup. Here they</p> <p>22 are.</p> <p>23 BY MR. KEYES:</p> <p>24 Q. So how was that communicated to</p>

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<p style="text-align: right;">Page 378</p> <p>1 Professor Cutler?</p> <p>2 A. I would have given him that list.</p> <p>3 Q. How?</p> <p>4 A. I don't remember.</p> <p>5 Q. Now, you said that Professor Cutler's</p> <p>6 percentages were something you needed to rely on</p> <p>7 for your work?</p> <p>8 A. Yes.</p> <p>9 Q. Did you look at drafts of</p> <p>10 Professor Cutler's report?</p> <p>11 MR. SOBOL: Again, I instruct him not</p> <p>12 to answer.</p> <p>13 MR. RICE: Counsel, can I have your</p> <p>14 basis for the objection, please?</p> <p>15 MR. SOBOL: It's not clear to me</p> <p>16 whether, under the existing rules for these</p> <p>17 depositions, whether it is fair game for people</p> <p>18 to be talking about drafts of various expert</p> <p>19 reports.</p> <p>20 MR. RICE: So is it attorney/client</p> <p>21 privilege-based concern?</p> <p>22 MR. SOBOL: No. It's whether or not</p> <p>23 the orders that apply to this case and drafts of</p> <p>24 expert reports are to be discussed by the</p>	<p style="text-align: right;">Page 380</p> <p>1 bicker about it, fine, but you're running out of</p> <p>2 time for the day.</p> <p>3 BY MR. KEYES:</p> <p>4 Q. How do you know what Professor</p> <p>5 Cutler's percentages are?</p> <p>6 MR. SOBOL: Other than drafts, you may</p> <p>7 answer.</p> <p>8 A. It takes the form of Excel tables that</p> <p>9 are reproduced in my report. And it's also not</p> <p>10 a prose issue, it's here is the Excel</p> <p>11 spreadsheet, here are the percentages, then I'm</p> <p>12 off and running.</p> <p>13 BY MR. KEYES:</p> <p>14 Q. And when did you get those</p> <p>15 percentages, the Excel spreadsheet that lists</p> <p>16 the percentages?</p> <p>17 A. Not the night before, not too much</p> <p>18 earlier than the deadline date, so it would have</p> <p>19 been a few days ahead, something like that.</p> <p>20 Q. And upon receipt of those percentages</p> <p>21 from Professor Cutler, who inputted them into</p> <p>22 your spreadsheets for purposes of running your</p> <p>23 calculations?</p> <p>24 A. Compass Lex would have done that.</p>
<p style="text-align: right;">Page 379</p> <p>1 experts. I think this comes very close to the</p> <p>2 line. Since Professor McGuire will be back next</p> <p>3 week, I've indicated that I'm instructing him</p> <p>4 now not to answer until I have better direction</p> <p>5 from others.</p> <p>6 MR. KEYES: Seems like your concern is</p> <p>7 whether the draft report is discoverable. I'm</p> <p>8 not asking for a copy of the draft report at</p> <p>9 this time. I just want to know whether</p> <p>10 Professor McGuire received it and saw it.</p> <p>11 MR. SOBOL: That's not my concern. I</p> <p>12 mean, I've stated my concern. I don't know</p> <p>13 whether or not discussions about drafts, not the</p> <p>14 drafts themselves, but whether discussions of</p> <p>15 drafts are discoverable or not.</p> <p>16 MR. KEYES: I haven't asked about</p> <p>17 discussions about drafts. You're jumping the</p> <p>18 gun. I'm asking, did he get a draft of</p> <p>19 Professor Cutler's report that provided the</p> <p>20 percentages upon which Professor McGuire has</p> <p>21 expressly said he relied.</p> <p>22 MR. SOBOL: Okay. Well, like I said,</p> <p>23 the instructions there, I'm not worried at all</p> <p>24 about the instruction. If you guys want to</p>	<p style="text-align: right;">Page 381</p> <p>1 Q. And what steps did you take to</p> <p>2 double-check that the percentages were entered</p> <p>3 correctly and that the math was correct in your</p> <p>4 own calculations?</p> <p>5 A. Well, I spot-check these things.</p> <p>6 Q. What do you mean you spot-check them?</p> <p>7 A. Just look at some of the products,</p> <p>8 does it look right, and then --</p> <p>9 Q. What do you mean does it look right?</p> <p>10 What benchmarks, criteria, standards are you</p> <p>11 using to determine whether it looks right?</p> <p>12 A. You're multiplying two numbers in each</p> <p>13 year for each division, it's not a complicated</p> <p>14 mathematical operation. The numbers are pretty</p> <p>15 small in most cases, by which I mean that the</p> <p>16 percent of harms attributable to misconduct are</p> <p>17 pretty small numbers, sometimes they're around</p> <p>18 1, 2, 3, 4, 5 percent. So what I do is look at</p> <p>19 the damages result to see if it seems to be 1,</p> <p>20 2, 3, 4, 5 percent of the potentially affected</p> <p>21 costs.</p> <p>22 Q. Would you turn to Appendix IV.C-1.1 in</p> <p>23 your report?</p> <p>24 MR. KO: Sorry, Andrew, which --</p>

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<p>1 MR. KEYES: Appendix IV.C-1.1.</p> <p>2 MR. KO: Thanks.</p> <p>3 BY MR. KEYES:</p> <p>4 Q. Are you there?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. This is a spreadsheet showing</p> <p>7 damages that you calculated for the Cuyahoga</p> <p>8 ADAMHS Board, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And I just want to confirm line 2 is</p> <p>11 titled "Opioid-Related Percentage of Services"?</p> <p>12 A. Right.</p> <p>13 Q. Do you see that?</p> <p>14 A. I do, yes.</p> <p>15 Q. And did you get those percentages from</p> <p>16 Professor Cutler?</p> <p>17 A. No, those are budget information that</p> <p>18 I put together.</p> <p>19 Q. Okay. Can you look at the sources and</p> <p>20 notes for number 2?</p> <p>21 A. Yeah, that's a metric analysis in the</p> <p>22 Cutler report, but it applies the metric</p> <p>23 analysis to the numbers in the budget. This</p> <p>24 isn't -- these numbers don't depend on Cutler's</p>	<p>1 A. I do.</p> <p>2 Q. You got those percentages from</p> <p>3 Professor Cutler?</p> <p>4 A. Also, yes, from Professor Cutler.</p> <p>5 Q. Line 15, do you see those percentages?</p> <p>6 A. I do.</p> <p>7 Q. Did you get those from Professor</p> <p>8 Cutler?</p> <p>9 A. Yes.</p> <p>10 Q. Line 17, do you see those percentages?</p> <p>11 A. Also from Professor Cutler.</p> <p>12 Q. Line 19?</p> <p>13 A. Same answer.</p> <p>14 Q. Okay. So on this chart, all of the</p> <p>15 percentages that are listed in lines 5, 7, 9,</p> <p>16 11, 13, 15, 17, and 19 are percentages that you</p> <p>17 received from Professor Cutler?</p> <p>18 A. That's right.</p> <p>19 Q. And for any of those percentages, did</p> <p>20 you tinker with them, modify them, change them</p> <p>21 before you inputted them into your calculations?</p> <p>22 A. No.</p> <p>23 Q. You accepted them as accurate by</p> <p>24 relying on Professor Cutler's work?</p>
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<p>1 empirical results about the effective shipments</p> <p>2 or Meredith's results, this particular line.</p> <p>3 Q. Okay. Now turning to line 5, there's</p> <p>4 a series of percentages.</p> <p>5 Do you see that?</p> <p>6 A. I see it, yes.</p> <p>7 Q. Did you get those from</p> <p>8 Professor Cutler?</p> <p>9 A. Yes.</p> <p>10 Q. Do you see that line 7, the</p> <p>11 percentages?</p> <p>12 A. I do.</p> <p>13 Q. Did you get those from</p> <p>14 Professor Cutler?</p> <p>15 A. Those are Cutler.</p> <p>16 Q. Line 9, do you see those percentages?</p> <p>17 A. I do.</p> <p>18 Q. Those are percentages from Professor</p> <p>19 Cutler?</p> <p>20 A. Those are also Cutler.</p> <p>21 Q. Line 11, there are percentages there,</p> <p>22 you got those percentages from Professor Cutler?</p> <p>23 A. Yes.</p> <p>24 Q. Line 13, do you see those percentages?</p>	<p>1 A. Yes.</p> <p>2 Q. And if I went through the same</p> <p>3 exercise for each chart for each affected</p> <p>4 division for Cuyahoga County and each chart for</p> <p>5 each affected division of Summit County, would</p> <p>6 you give me the same answers?</p> <p>7 MR. SOBOL: Well, objection.</p> <p>8 BY MR. KEYES:</p> <p>9 Q. That is, the opioid-related percentage</p> <p>10 of services is something you prepared based on</p> <p>11 Professor Cutler's metric analysis, correct?</p> <p>12 A. It would differ division by division,</p> <p>13 but at some point when we start talking about</p> <p>14 the rows following something like approach one,</p> <p>15 that's where the Cutler percentages start coming</p> <p>16 in.</p> <p>17 Q. And again, all of those percentages</p> <p>18 come from Professor Cutler. You accepted them</p> <p>19 without modifying, tinkering them, you accepted</p> <p>20 them as-is based on Professor Cutler's work?</p> <p>21 A. Yes.</p> <p>22 MR. SOBOL: How are we doing with</p> <p>23 time?</p> <p>24 MR. KEYES: I have a note we have five</p>

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<p style="text-align: right;">Page 386</p> <p>1 minutes remaining. And unless there are any 2 objections, I'm happy to call it quits today. 3 MR. SOBOL: Just tack it onto the next 4 time. 5 MR. KEYES: Sure. 6 THE VIDEOGRAPHER: The time is 7 6:09 p.m. 8 MR. KEYES: Does anyone else have 9 questions they want to use for the five minutes? 10 No? Okay. 11 THE VIDEOGRAPHER: The time is 12 6:09 p.m. This day of deposition has concluded, 13 and we are off the record. 14 (Whereupon, the deposition was 15 adjourned.) 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 388</p> <p>1 INSTRUCTIONS TO WITNESS 2 3 Please read your deposition over 4 carefully and make any necessary corrections. 5 You should state the reason in the appropriate 6 space on the errata sheet for any corrections 7 that are made. 8 After doing so, please sign the 9 errata sheet and date it. It will be attached 10 to your deposition. 11 It is imperative that you return 12 the original errata sheet to the deposing 13 attorney within thirty (30) days of receipt of 14 the deposition transcript by you. If you fail 15 to do so, the deposition transcript may be 16 deemed to be accurate and may be used in court. 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 387</p> <p>1 COMMONWEALTH OF MASSACHUSETTS) 2 SUFFOLK, SS.) 3 I, MAUREEN O'CONNOR POLLARD, RMR, CLR, 4 and Notary Public in and for the Commonwealth of 5 Massachusetts, do certify that on the 23rd day 6 of April, 2019, at 9:02 o'clock, the person 7 above-named was duly sworn to testify to the 8 truth of their knowledge, and examined, and such 9 examination reduced to typewriting under my 10 direction, and is a true record of the testimony 11 given by the witness. I further certify that I 12 am neither attorney, related or employed by any 13 of the parties to this action, and that I am not 14 a relative or employee of any attorney employed 15 by the parties hereto, or financially interested 16 in the action. 17 In witness whereof, I have hereunto 18 set my hand this 25th day of April, 2019. 19 20 21 MAUREEN O'CONNOR POLLARD, NOTARY PUBLIC 22 Realtime Systems Administrator 23 CSR #149108 24</p>	<p style="text-align: right;">Page 389</p> <p>1 ----- 2 E R R A T A 3 ----- 4 PAGE LINE CHANGE 5 REASON: _____ 6 _____ 7 REASON: _____ 8 _____ 9 REASON: _____ 10 _____ 11 REASON: _____ 12 _____ 13 REASON: _____ 14 _____ 15 REASON: _____ 16 _____ 17 REASON: _____ 18 _____ 19 REASON: _____ 20 _____ 21 REASON: _____ 22 _____ 23 _____ 24</p>

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<div>Page 390</div> <div>1 2 ACKNOWLEDGMENT OF DEPONENT 3 4 I, _____, do 5 Hereby certify that I have read the foregoing 6 pages, and that the same is a correct 7 transcription of the answers given by me to the 8 questions therein propounded, except for the 9 corrections or changes in form or substance, if 10 any, noted in the attached Errata Sheet. 11 12 _____ 13 THOMAS G. MCGUIRE, Ph.D. DATE 14 15 16 Subscribed and sworn 17 To before me this 18 _____ day of _____, 20____. 19 My commission expires: _____ 20 21 _____ 22 Notary Public 23 24</div>	
<div>Page 391</div> <div>1 LAWYER'S NOTES 2 PAGE LINE 3 _____ 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____</div>	

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL)	
PRESCRIPTION)	MDL No. 2804
OPIATE LITIGATION)	
)	Case No.
THIS DOCUMENT RELATES TO:)	1:17-MD-2804
)	
The County of Summit, Ohio)	Hon. Dan A.
et al. v. Purdue)	Polster
Pharma L.P., et al.)	
Case No. 17-OP-45004)	
)	
The County of Cuyahoga v.)	
Purdue Pharma L.P., et al.)	
Case No. 18-OP-45090)	

TUESDAY, APRIL 30, 2019

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CONFIDENTIALITY REVIEW

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Videotaped deposition of Thomas G. McGuire, Ph.D., Volume II, held at the offices of Robins Kaplan LLP, 800 Boylston Street, Suite 2500, Boston, Massachusetts, commencing at 8:31 a.m., on the above date, before Carrie A. Campbell, Registered Diplomat Reporter and Certified Realtime Reporter.

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<p style="text-align: right;">Page 397</p> <p>1 ALSO PRESENT VIA STREAM: 2 CATE BREWER, Keller Rohrback 3 JUSTIN TAYLOR, Bailey Wyant 4 ERICA BENTON, Compass Lexecon 5 ALICE KAMINSKI, Compass Lexecon 6 HAL SIDER, Compass Lexecon 7 VIDEOGRAPHER: 8 ROBERT MARTIGNETTI, 9 Golkow Litigation Services 10 --- 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 399</p> <p>1 VIDEOGRAPHER: We are now on 2 the record. My name is Robert 3 Martignetti. I'm a videographer for 4 Golkow Litigation Services. 5 Today's date is April 30, 2019, 6 and the time is 8:31 a.m. 7 This continued video deposition 8 of Thomas McGuire is being held in 9 Boston, Massachusetts, in re: National 10 Prescription Opiate Litigation. 11 Will counsel that was not 12 present for the first part of this 13 deposition please identify themselves. 14 MR. ARNOLD: Andrew Arnold from 15 Motley Rice for plaintiffs. 16 MS. SACKS: Shayna Sacks, 17 Napoli Shkolnik, for Cuyahoga County. 18 MR. CARTER: Ed Carter for 19 Walmart. 20 VIDEOGRAPHER: The court 21 reporter is Carrie Campbell. 22 Professor McGuire, do you 23 understand that you're still under 24 oath? 25 THE WITNESS: Yes, I do.</p>
<p style="text-align: right;">Page 398</p> <p>1 INDEX 2 PAGE 3 APPEARANCES..... 393 4 EXAMINATIONS 5 BY MR. KEYES..... 400 6 BY MR. LONERGAN..... 730 7 BY MR. CARTER..... 788 8 BY MR. HALLER..... 835 9 BY MR. SOBOL..... 846 10 BY MR. HALLER..... 847 11 12 EXHIBITS 13 No. Description Page 14 McGuire 6 Report of Professor Thomas 606 15 McGuire Regarding Public 16 Nuisance, March 25, 2019 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 400</p> <p>1 DIRECT EXAMINATION (CONTINUED) 2 QUESTIONS BY MR. KEYES: 3 Q. Good morning, Professor 4 McGuire. This is day two of your deposition. 5 Day one was last Tuesday, April 30th {sic}. 6 Do you understand you're still 7 under oath today? 8 A. I do understand, yes. 9 Q. What, if anything, did you do 10 in connection with your engagement in this 11 case since you finished your testimony on day 12 one? 13 A. I continued to study my 14 reports. I had a phone call with staff 15 Compass Lexecon. I requested and reviewed as 16 best I could several of the depositions that 17 took place since my initial day, and I met 18 with Tom Sobol yesterday, and I had a brief 19 call with David Ko yesterday as well. 20 Q. Anything else? 21 A. No, that's all that I can 22 recall. 23 Q. You said you continued to study 24 your reports. 25 Do you mean both your report on</p>

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<p>1 what you call damages and your report on what</p> <p>2 you call the public nuisance?</p> <p>3 A. Yeah, those are the two reports</p> <p>4 I'm referring to.</p> <p>5 Q. And did you read them in their</p> <p>6 entirety?</p> <p>7 A. I would say, yes, I read them</p> <p>8 in their entirety.</p> <p>9 Q. How much did you spend, quote,</p> <p>10 studying your two reports in the last week?</p> <p>11 A. I would say I spent maybe six</p> <p>12 to eight hours.</p> <p>13 Q. You said you had a phone call</p> <p>14 with come Compass Lexecon?</p> <p>15 A. That's right.</p> <p>16 Q. Who did you speak with at</p> <p>17 Compass Lexecon?</p> <p>18 A. I spoke with Alice Kaminski.</p> <p>19 And there was another Compass Lex staff</p> <p>20 person in the room, but I didn't catch her</p> <p>21 name.</p> <p>22 Q. And this was a phone call --</p> <p>23 A. Yes.</p> <p>24 Q. -- as opposed to as in-person</p> <p>25 meeting?</p>	<p>1 question?</p> <p>2 A. My question was I wanted to</p> <p>3 review the OUD, opioid use disorder,</p> <p>4 prevalence estimates.</p> <p>5 Q. What was your specific question</p> <p>6 about the OUD prevalence estimates?</p> <p>7 A. I just wanted to review the</p> <p>8 entire section, so we just went through --</p> <p>9 it's a certain appendix to my report. We</p> <p>10 just went through it again.</p> <p>11 Q. And did you ask her to explain</p> <p>12 it to you?</p> <p>13 A. Well, we just -- we reviewed</p> <p>14 it, so she helped me remember some of the</p> <p>15 stuff that was done there.</p> <p>16 Q. What did she help you remember?</p> <p>17 A. Really the entire operation.</p> <p>18 Q. What do you mean "the entire</p> <p>19 operation"?</p> <p>20 A. I mean the procedure by which I</p> <p>21 estimated prevalence.</p> <p>22 Q. Can you be more specific about</p> <p>23 what she helped you remember about the</p> <p>24 procedure by which you estimated the</p> <p>25 prevalence of OUD?</p>
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<p>1 A. Yes, it was a phone call.</p> <p>2 Q. How long was the call?</p> <p>3 A. It was less than half an hour,</p> <p>4 I would say.</p> <p>5 Q. And when was the call?</p> <p>6 A. I spoke with Alice yesterday.</p> <p>7 Q. Did anyone participate in this</p> <p>8 call besides you, Alice Kaminski and this</p> <p>9 other person from Compass Lexecon whose name</p> <p>10 you don't know?</p> <p>11 A. No, there was no other person</p> <p>12 on the call.</p> <p>13 Q. Just the three of you?</p> <p>14 A. Just the three of us.</p> <p>15 Q. Who initiated this phone call?</p> <p>16 A. Do you mean who requested the</p> <p>17 phone call or who --</p> <p>18 Q. Yes.</p> <p>19 A. -- actually dialed the number?</p> <p>20 Q. Who requested the phone call?</p> <p>21 A. I requested the phone call.</p> <p>22 Q. Why?</p> <p>23 A. Because I had a question about</p> <p>24 some part of the calculations.</p> <p>25 Q. Okay. And what was your</p>	<p>1 A. Well, as I said, we went</p> <p>2 through the entire appendix step by step,</p> <p>3 so...</p> <p>4 Q. And she helped you reconstruct</p> <p>5 the various steps that were taken in your</p> <p>6 report to estimate the prevalence of OUD?</p> <p>7 MR. SOBOL: Objection.</p> <p>8 THE WITNESS: Well, we</p> <p>9 discussed the -- and reviewed the</p> <p>10 attachment to my report, Attachment D</p> <p>11 or whatever it is.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. Did you talk to Ms. Kaminski</p> <p>14 and this other person from Compass Lexecon</p> <p>15 about anything else during your call</p> <p>16 yesterday?</p> <p>17 A. Actually, we did.</p> <p>18 I asked them a question about</p> <p>19 the crime estimates to remind me of the</p> <p>20 nature of the -- some of the data I used in</p> <p>21 the report.</p> <p>22 Q. Okay. And what specific data</p> <p>23 are you referring to?</p> <p>24 A. There's an abbreviation for the</p> <p>25 data. It's NIBRS, national institute --</p>

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<p>1 sorry, National Incident Based Reporting 2 System. It's maintained by the FBI. 3 Q. Okay. But what was your 4 specific question? 5 Did you ask her what NIBRS 6 stands for? 7 A. No. No. I could look up that 8 easy enough. 9 Q. Then what was your specific 10 question? 11 A. My specific question was the -- 12 to remind me about the coverage of that data 13 set, which is incomplete. 14 Q. How was it incomplete? 15 A. The data set includes units 16 that report, and not all units report data 17 into the reporting system. 18 Q. Which units do not report into 19 that system? 20 A. Well, I think it varies across 21 the country, really. 22 Q. You said you asked the 23 question. 24 Did she give you an answer? 25 A. Well, she reminded me that that</p>	<p>1 MR. SOBOL: Objection. 2 THE WITNESS: The phone call 3 yesterday was the only conversation I 4 had with anyone at Compass Lexecon. 5 QUESTIONS BY MR. KEYES: 6 Q. In your first day of deposition 7 testimony, you mentioned a number of other 8 people on the Compass Lexecon team that 9 assisted you. 10 Do you remember that? 11 A. I do remember that. 12 Q. Did you speak with any of those 13 other people since your deposition last 14 Tuesday? 15 A. The only people from Compass 16 Lex I spoke to were Alice and her colleague 17 yesterday. 18 Q. And did Ms. Kaminski give you 19 anything in writing either before or after 20 yesterday's call? 21 A. No, Alice gave me nothing in 22 writing in the week since. 23 Q. How about the other person on 24 this call yesterday? 25 A. No, nothing.</p>
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<p>1 was true, for example, and that the coverage 2 in our counties was -- while not 100 percent, 3 was good. 4 Q. And can you quantify good, if 5 not 100 percent? 6 A. I think around 80 percent. 7 Q. Did you talk to Ms. Kaminski or 8 the other person from Compass Lexecon about 9 anything else regarding the crime estimates 10 set forth in your report? 11 A. No, I didn't. That was the 12 only question I asked about crime. 13 Q. Okay. Besides the questions 14 you asked about how you had estimated the 15 prevalence of OUD and the question you asked 16 about the crime estimates in your report, did 17 you cover any other topics with Ms. Kaminski? 18 A. No, those were the only two 19 topics that we covered. 20 Q. And separate from that phone 21 call with Ms. Kaminski and this other unnamed 22 person from Compass Lexecon yesterday, did 23 you speak with anyone from Compass Lexecon 24 about this engagement since your first day of 25 deposition last Tuesday?</p>	<p>1 Q. How about anyone else from 2 Compass Lexecon? 3 A. There was no one else from 4 Compass Lex that sent me any written 5 material. 6 Q. You said you studied 7 depositions since your first day of 8 deposition testimony; is that correct? 9 A. I'm not sure I used the word 10 "studied." I requested depositions and 11 looked at them as best I could. 12 Q. What depositions did you 13 request? 14 A. I requested depositions of 15 Dr. Schumacher, Professor Cutler and 16 Professor Gruber. 17 Q. Did you request any other 18 deposition transcripts? 19 A. No, I didn't. Those were the 20 only depositions I requested. 21 Q. Did you get all three? 22 A. I did get all three, yes. 23 Q. Who did you get them from? 24 A. I got them from counsel. I 25 think there probably were more than one</p>

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<p>1 source. I'm not -- I don't remember who sent</p> <p>2 what.</p> <p>3 Q. And you say you looked at the</p> <p>4 depositions. What do you mean?</p> <p>5 Did you read them?</p> <p>6 A. Well, I didn't read them in</p> <p>7 their entirety. As my mother would say about</p> <p>8 something like this, my eyes were bigger than</p> <p>9 my stomach.</p> <p>10 They're about 400 pages, and</p> <p>11 I -- "studied them" is too strong a word.</p> <p>12 Something like "reviewed them" would be a</p> <p>13 good word.</p> <p>14 Q. Okay. And if you didn't review</p> <p>15 them in their entirety, how did you decide</p> <p>16 what parts to read and what parts to skip</p> <p>17 over?</p> <p>18 A. I just -- I looked at the</p> <p>19 pages. I seemed -- I tried to look for</p> <p>20 things that seemed that might be relevant to</p> <p>21 me, and I did the best I could in the time</p> <p>22 that I had.</p> <p>23 Q. Well, how much time did you</p> <p>24 spend reviewing these three deposition</p> <p>25 transcripts?</p>	<p>1 testimony of anyone else besides these three</p> <p>2 people?</p> <p>3 A. Those were the only three</p> <p>4 depositions I requested.</p> <p>5 Q. Did you request the deposition</p> <p>6 testimony of any fact witness in the case?</p> <p>7 A. In the time between my last</p> <p>8 meeting with you and today?</p> <p>9 Q. Yes.</p> <p>10 A. No. These were the only three</p> <p>11 depositions I requested, period.</p> <p>12 Q. Did you speak with</p> <p>13 Dr. Schumacher since the first day of your</p> <p>14 deposition?</p> <p>15 A. No, I did not speak with</p> <p>16 Dr. Schumacher.</p> <p>17 Q. How about Professor Cutler?</p> <p>18 A. I did speak with Dr. Cutler.</p> <p>19 Q. How about Professor Gruber?</p> <p>20 A. No, I didn't speak with</p> <p>21 Professor Gruber.</p> <p>22 Q. So in addition to the things</p> <p>23 you list before that you had done since your</p> <p>24 first day of deposition, you also spoke with</p> <p>25 Professor Cutler, correct?</p>
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<p>1 A. In total?</p> <p>2 Q. In total.</p> <p>3 A. I would say about three hours</p> <p>4 in total.</p> <p>5 Q. And how much of that three</p> <p>6 hours did you spend reviewing</p> <p>7 Dr. Schumacher's deposition testimony?</p> <p>8 A. I would say maybe it wasn't</p> <p>9 quite an hour for each deposition, but maybe</p> <p>10 a bit more for Schumacher and a bit less for</p> <p>11 the other two.</p> <p>12 Q. And why is that? Why did you</p> <p>13 spend more time on Dr. Schumacher's</p> <p>14 deposition transcript than the other two?</p> <p>15 A. The reason I spent more time</p> <p>16 with that -- ideally, of course, I'd have all</p> <p>17 the time in the world. It had to do with</p> <p>18 when I received them and how much time I</p> <p>19 could set aside at the time I got the</p> <p>20 depositions.</p> <p>21 Q. So when did you review the</p> <p>22 three transcripts?</p> <p>23 A. I believe I reviewed all three</p> <p>24 transcripts yesterday.</p> <p>25 Q. Did you request the deposition</p>	<p>1 A. I did speak with Professor</p> <p>2 Cutler but not about my testimony.</p> <p>3 Q. Okay. What did you speak with</p> <p>4 Professor Cutler about?</p> <p>5 A. We were at a dinner together.</p> <p>6 It's called a program dinner.</p> <p>7 David Cutler is the head of the</p> <p>8 Ph.D. training program for Ph.D. in health</p> <p>9 policy at Harvard University. I'm the</p> <p>10 director of admissions of that, and I was</p> <p>11 among the faculty that attended the dinner.</p> <p>12 There were some students, and I spoke with</p> <p>13 David at the dinner.</p> <p>14 Q. Did you speak with him about</p> <p>15 his deposition?</p> <p>16 A. No, I didn't.</p> <p>17 Q. Did you speak with him about</p> <p>18 your deposition?</p> <p>19 A. Not at all, no.</p> <p>20 Q. Did you speak with him about</p> <p>21 any of the work that either of you had</p> <p>22 performed in this case?</p> <p>23 A. There was no substantive</p> <p>24 discussion -- excuse me. There was no</p> <p>25 substantive discussion of any kind of the</p>

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<p style="text-align: right;">Page 413</p> <p>1 material in this case or really any other</p> <p>2 area of economic research.</p> <p>3 Q. Since you finished your</p> <p>4 deposition testimony last Tuesday, did you</p> <p>5 speak with any other expert who either is</p> <p>6 offering opinions in this case or who</p> <p>7 provided an expert report in this case?</p> <p>8 A. Since Tuesday, I don't think</p> <p>9 I've spoken with anyone else.</p> <p>10 Q. And did you speak with any fact</p> <p>11 witness in this case since your first day of</p> <p>12 deposition?</p> <p>13 A. No, I spoke to no fact witness</p> <p>14 since last Tuesday.</p> <p>15 Q. You also mentioned that you had</p> <p>16 met with Mr. Sobol, and you had a brief call</p> <p>17 with Mr. Ko?</p> <p>18 A. That's right.</p> <p>19 Q. How long was your meeting with</p> <p>20 Mr. Sobol?</p> <p>21 A. It was about an hour, I would</p> <p>22 say.</p> <p>23 Q. How long was your call with</p> <p>24 Mr. Ko?</p> <p>25 A. My call with David was less</p>	<p style="text-align: right;">Page 415</p> <p>1 Do you see that?</p> <p>2 A. I do see that.</p> <p>3 Q. Okay. And then it lists a</p> <p>4 percentage for each year from 2006</p> <p>5 through 2017.</p> <p>6 Do you see that?</p> <p>7 A. I see that, too.</p> <p>8 Q. And then there's a note for</p> <p>9 note 2 that says, quote, "Based on metric</p> <p>10 analysis in the Cutler report, see Table 3.5</p> <p>11 sub 3."</p> <p>12 Do you see that?</p> <p>13 A. I also see that, yes.</p> <p>14 Q. Okay. And when you say "based</p> <p>15 on the metric analysis in the Cutler report,"</p> <p>16 you mean you took the percentage from Cutler</p> <p>17 report Table 3.5 sub 3 and you just put it</p> <p>18 into your calculations, correct?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 THE WITNESS: Well, it's based</p> <p>21 on. It doesn't -- I would have to</p> <p>22 remind myself what 3.5.3 that Cutler</p> <p>23 did to be -- to refresh my memory</p> <p>24 about -- of what percent this is.</p> <p>25</p>
<p style="text-align: right;">Page 414</p> <p>1 than half an hour.</p> <p>2 Q. And were both the meeting with</p> <p>3 Mr. Sobol and the call with Mr. Ko yesterday?</p> <p>4 A. They were both yesterday, yes.</p> <p>5 Q. So you had a long day yesterday</p> <p>6 in this case to prepare for today's</p> <p>7 deposition?</p> <p>8 A. Well, that only accounts for</p> <p>9 about six hours in total.</p> <p>10 Q. Would you open your report on</p> <p>11 damages to -- which is Exhibit Number 1,</p> <p>12 giving you back the original, and would you</p> <p>13 turn to Appendix 4.C-1.1?</p> <p>14 A. Okay.</p> <p>15 Okay. I think I'm there.</p> <p>16 Q. Do you have Appendix 4.C-1.1 in</p> <p>17 front of you?</p> <p>18 A. I do, yes.</p> <p>19 Q. Okay. And this is titled</p> <p>20 "Cuyahoga ADAMHS Board damages."</p> <p>21 Correct?</p> <p>22 A. I see that, yes.</p> <p>23 Q. Okay. Turn your attention to</p> <p>24 line 2. There's a line that says,</p> <p>25 "Opioid-Related Percentage of Services."</p>	<p style="text-align: right;">Page 416</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Well, he had a percentage in</p> <p>3 that table, correct?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 QUESTIONS BY MR. KEYES:</p> <p>6 Q. That was titled "Opioid-Related</p> <p>7 Percentage of Services"?</p> <p>8 MR. SOBOL: Objection. The</p> <p>9 document's not in front of him.</p> <p>10 THE WITNESS: Yeah, I'd have to</p> <p>11 take another look to remind myself</p> <p>12 what this refers to exactly.</p> <p>13 Excuse me. This shows you the</p> <p>14 source, and, you know, I would need to</p> <p>15 see the source in order to make a</p> <p>16 determination.</p> <p>17 QUESTIONS BY MR. KEYES:</p> <p>18 Q. Okay. Sitting here right now,</p> <p>19 do you know whether you just took the</p> <p>20 calculation -- the percentage that Professor</p> <p>21 Cutler had in that table and put it in your</p> <p>22 table or whether you did something else to</p> <p>23 his percentage?</p> <p>24 MR. SOBOL: Objection. Asked</p> <p>25 and answered.</p>

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<p>1 THE WITNESS: Well, this number</p> <p>2 is based on Professor Cutler's</p> <p>3 analysis, and to be able to</p> <p>4 reconstruct where this came from, I</p> <p>5 would need to look at what David</p> <p>6 actually reported.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. So sitting here right now, when</p> <p>9 you offered this opioid percentage of</p> <p>10 services, you can't tell me how you arrived</p> <p>11 at that number?</p> <p>12 MR. SOBOL: Objection. Asked</p> <p>13 and answered.</p> <p>14 THE WITNESS: This note</p> <p>15 explains the source. And I'm happy,</p> <p>16 if you have happen to have that</p> <p>17 report, that I can take a look at it</p> <p>18 and make a determination.</p> <p>19 QUESTIONS BY MR. KEYES:</p> <p>20 Q. Okay. I understand that if you</p> <p>21 read Cutler's report, it may refresh or</p> <p>22 remind you --</p> <p>23 A. Yeah, it certainly will.</p> <p>24 Q. -- but I'm entitled to probe</p> <p>25 what you know without looking at a document</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Did you finish your answer?</p> <p>3 A. I don't think I need to say</p> <p>4 anything more.</p> <p>5 Q. Okay. Would it surprise you if</p> <p>6 you just took the percentages in</p> <p>7 Professor Cutler's table and incorporated</p> <p>8 them here as line 2?</p> <p>9 Would that surprise you?</p> <p>10 MR. SOBOL: Objection. Asked</p> <p>11 and answered.</p> <p>12 THE WITNESS: Well, I don't</p> <p>13 know if it would surprise me or not.</p> <p>14 There are aspects of Cutler's</p> <p>15 percentages that I did take and use</p> <p>16 directly, but I don't want to -- I</p> <p>17 don't feel like I can commit myself to</p> <p>18 doing that unless I actually refresh</p> <p>19 my memory about the Cutler report.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. Okay. Would you return to</p> <p>22 Appendix 4.C-2.1.</p> <p>23 Are you there?</p> <p>24 A. I'm there, yes.</p> <p>25 Q. And this is titled "Cuyahoga</p>
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<p>1 or some kind of cheat sheet.</p> <p>2 MR. SOBOL: I disagree with</p> <p>3 that about his entitlements or not.</p> <p>4 And you're not to listen to what he</p> <p>5 says about what he's entitled to or</p> <p>6 not entitled to do.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. So sitting here today, can you</p> <p>9 tell me what you did to take the percentages</p> <p>10 that you say are in the Cutler report at</p> <p>11 Table 3.5 sub 3 to arrive at the percentages</p> <p>12 you list here on line 2?</p> <p>13 MR. SOBOL: Objection. Asked</p> <p>14 and answered.</p> <p>15 THE WITNESS: Well, what note 2</p> <p>16 says is it's based on the metric</p> <p>17 analysis in the Cutler report. As I'm</p> <p>18 sitting here today, I can't</p> <p>19 reconstruct where these numbers came</p> <p>20 from based on that analysis.</p> <p>21 QUESTIONS BY MR. KEYES:</p> <p>22 Q. Would it surprise --</p> <p>23 MR. SOBOL: He hasn't finished</p> <p>24 his answer.</p> <p>25</p>	<p>1 Division of Children and Family Services</p> <p>2 Damages"?</p> <p>3 A. Yeah, I see that.</p> <p>4 Q. And do you see line 9 says,</p> <p>5 "Opioid-Related Percentage of Removals"?</p> <p>6 A. I see that, yes.</p> <p>7 Q. And it then has a note 9.</p> <p>8 Note 9 says, "Based on metric analysis in the</p> <p>9 Cutler report, see Table 3.6 sub 1"?</p> <p>10 A. I see that.</p> <p>11 Q. Okay. So did you take the</p> <p>12 percentages that were in that referenced</p> <p>13 Cutler table and incorporate in this line, or</p> <p>14 did you do something additional to those</p> <p>15 percentages?</p> <p>16 A. This is the same situation for</p> <p>17 me. It's based on the metric analysis in</p> <p>18 Cutler's report, but for me to determine</p> <p>19 whether there -- I just kind of took them in</p> <p>20 a sense or whether I had to do something</p> <p>21 else, I really would need to refresh my</p> <p>22 memory about.</p> <p>23 Q. So you can't explain sitting</p> <p>24 here right what, quote, "based on" means?</p> <p>25 MR. SOBOL: Objection. Asked</p>

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<p style="text-align: right;">Page 421</p> <p>1 and answered.</p> <p>2 THE WITNESS: I can explain</p> <p>3 what "based on" means. You know, it's</p> <p>4 a typical form of academic citation</p> <p>5 that if you use something, you make a</p> <p>6 reference to the source of that thing</p> <p>7 without going through necessarily all</p> <p>8 the manipulations that led to that</p> <p>9 number.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. You say it's a typical form of</p> <p>12 academic citation.</p> <p>13 When you take a figure from</p> <p>14 another source and you incorporate that into</p> <p>15 your work, do you cite the source, or do you</p> <p>16 say "based on" the source --</p> <p>17 MR. SOBOL: Objection.</p> <p>18 QUESTIONS BY MR. KEYES:</p> <p>19 Q. -- as a matter of your general</p> <p>20 practice?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 THE WITNESS: If I understand</p> <p>23 your question, you're asking about an</p> <p>24 academic article that wouldn't be</p> <p>25 necessarily part of a litigation.</p>	<p style="text-align: right;">Page 423</p> <p>1 MR. SOBOL: Objection. Asked</p> <p>2 and answered.</p> <p>3 THE WITNESS: Well, I think</p> <p>4 the -- so we're -- are we -- Table</p> <p>5 4.C-2.1 is what we're talking about?</p> <p>6 QUESTIONS BY MR. KEYES:</p> <p>7 Q. We're still on</p> <p>8 Appendix 4.C-2.1, line 9, where you list</p> <p>9 percentages for each year for, quote,</p> <p>10 opioid-related percentage of removals.</p> <p>11 Did you do any independent work</p> <p>12 to arrive at those figures?</p> <p>13 MR. SOBOL: Objection. Asked</p> <p>14 and answered again.</p> <p>15 THE WITNESS: Well, these are</p> <p>16 based on Professor Cutler's report, so</p> <p>17 they would derive from Professor</p> <p>18 Cutler's work, not derive from my own.</p> <p>19 QUESTIONS BY MR. KEYES:</p> <p>20 Q. So is that to say, no, I did</p> <p>21 not do any independent work?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. I'm trying to understand what</p> <p>25 you did, Professor McGuire.</p>
<p style="text-align: right;">Page 422</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Well, let's take them one at a</p> <p>3 time.</p> <p>4 In your nomenclature, when you</p> <p>5 say "based on," is that saying "I got the</p> <p>6 figure from the cited source and here it is,"</p> <p>7 or are you saying "I got information from the</p> <p>8 cited source and then I did something else to</p> <p>9 arrive at the number I'm listing here"?</p> <p>10 MR. SOBOL: Objection. Asked</p> <p>11 and answered.</p> <p>12 THE WITNESS: When I say "based</p> <p>13 on" -- and I think this would apply</p> <p>14 here as well as it would apply if I</p> <p>15 were doing an academic paper -- it</p> <p>16 could refer to either. It doesn't say</p> <p>17 it is the number, it doesn't say</p> <p>18 describe the calculation, but it</p> <p>19 points the reader to where one would</p> <p>20 need to look in order to figure it</p> <p>21 out.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Did you do any independent work</p> <p>24 to arrive at what you list here as the</p> <p>25 opioid-related percentage of removals?</p>	<p style="text-align: right;">Page 424</p> <p>1 So when you list opioid-related</p> <p>2 percentage of removals and you give a</p> <p>3 percentage for each year, I want to know:</p> <p>4 Did you just take that from Professor Cutler,</p> <p>5 or did you do some work yourself to arrive at</p> <p>6 those percentages?</p> <p>7 MR. SOBOL: Objection. I</p> <p>8 instruct you not to answer.</p> <p>9 MR. KEYES: Really. On what</p> <p>10 basis?</p> <p>11 MR. SOBOL: Move on.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. Are you refusing to answer the</p> <p>14 question of whether you did any independent</p> <p>15 work to arrive at line 9 on this chart?</p> <p>16 A. I'm following directions.</p> <p>17 Q. Okay. Would you turn to</p> <p>18 Appendix 4.C-3.1?</p> <p>19 A. Okay.</p> <p>20 Q. Are you there?</p> <p>21 A. I am.</p> <p>22 Q. And this is titled "Cuyahoga</p> <p>23 Office of Prosecutor Damages"?</p> <p>24 A. I see that.</p> <p>25 Q. And line 10 says,</p>

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<p>1 "Opioid-Related Percentage of Charges"?</p> <p>2 A. I see that, yes.</p> <p>3 Q. And you list a percentage for</p> <p>4 each year from 2006 to 2017, correct?</p> <p>5 A. Yes, I see that.</p> <p>6 Q. And line 10 has a cite which</p> <p>7 says, "Based on metric analysis in the Cutler</p> <p>8 report, see Table 3.4 sub 3."</p> <p>9 Do you see that?</p> <p>10 A. I do, yes.</p> <p>11 Q. Okay. Did you just take the</p> <p>12 percentages that Professor Cutler had</p> <p>13 calculated and incorporate them here, or did</p> <p>14 you do something to those percentages?</p> <p>15 A. I would have to answer in the</p> <p>16 same way that I've answered your previous</p> <p>17 questions about the previous two tables. In</p> <p>18 order to be sure, I would like to -- I would</p> <p>19 need to refresh myself about what David's</p> <p>20 Table 3.4.3 consisted of.</p> <p>21 Q. Did you do any independent work</p> <p>22 to determine the, quote, "opioid-related</p> <p>23 percentage of charges" that you list here for</p> <p>24 each of those years?</p> <p>25 MR. SOBOL: Objection. Asked</p>	<p>1 each year from 2006 to 2017?</p> <p>2 A. Yes, it does.</p> <p>3 Q. Okay. And this lists as its</p> <p>4 cite, based on metric analysis in the Cutler</p> <p>5 report, "see Table 3.4 sub 3."</p> <p>6 Do you see that?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. Did you take the percentages</p> <p>9 from that cited table that had been</p> <p>10 calculated by Professor Cutler and</p> <p>11 incorporate them into your line 9 here, or</p> <p>12 did you do something else to those</p> <p>13 percentages?</p> <p>14 A. I have to answer this in the</p> <p>15 same way I would answer the questions about</p> <p>16 your previous three tables. It's based on</p> <p>17 the analysis in the Cutler report, and in</p> <p>18 order to reconstruct these numbers, I would</p> <p>19 need to refresh myself about what David's</p> <p>20 report contained.</p> <p>21 Q. Did you do any independent work</p> <p>22 to arrive at the figures that you list here</p> <p>23 as, quote, "opioid-related percentage of</p> <p>24 charges"?</p> <p>25 MR. SOBOL: Objection. Asked</p>
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<p>1 and answered.</p> <p>2 MR. KEYES: No, I haven't asked</p> <p>3 him that. This is a different line.</p> <p>4 MR. SOBOL: No, you have.</p> <p>5 THE WITNESS: Well, as note 10</p> <p>6 says, this is based on the analysis in</p> <p>7 Professor Cutler's report.</p> <p>8 To be able to reconstruct it,</p> <p>9 I'd have to go back and see what David</p> <p>10 had done.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Okay. Would you turn to</p> <p>13 Appendix 4.C-4.1.</p> <p>14 Are you there?</p> <p>15 A. I'm there, yes.</p> <p>16 Q. And this is titled "Cuyahoga</p> <p>17 Office of Public Defender Damages."</p> <p>18 Correct?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Do you see line 9?</p> <p>21 A. I see line 9.</p> <p>22 Q. It's titled "Opioid-Related</p> <p>23 Percentage of Charges."</p> <p>24 A. Yes, it is.</p> <p>25 Q. And it lists percentages for</p>	<p>1 and answered.</p> <p>2 THE WITNESS: Well, I don't</p> <p>3 really have anything to add to what I</p> <p>4 answered, you know, 30 seconds ago.</p> <p>5 It's based on Cutler's report, and I'd</p> <p>6 need to see that in order to</p> <p>7 reconstruct how -- where these numbers</p> <p>8 came from.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. Would you turn to</p> <p>11 Appendix 4.C-5.1?</p> <p>12 A. Okay. I'm there.</p> <p>13 Q. It's titled "Cuyahoga Court of</p> <p>14 Common Pleas Damages"?</p> <p>15 A. Yes, it is.</p> <p>16 Q. If you turn to line, it says,</p> <p>17 "Opioid-Related Percentage of Adult Charges."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And it lists percentages for</p> <p>21 each year from 2006 to 2017 --</p> <p>22 A. Yes, it does.</p> <p>23 Q. -- correct?</p> <p>24 And it says that this is "based</p> <p>25 on metric analysis in the Cutler report, see</p>

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<p>1 Table 3.4 sub 6," correct?</p> <p>2 MR. SOBOL: Is there a</p> <p>3 footnote?</p> <p>4 You said, "it says." Was there</p> <p>5 a footnote, or did the table say that?</p> <p>6 MR. KEYES: The footnote 10</p> <p>7 says, "Based on metric analysis in the</p> <p>8 Cutler report, see Table 3.4 sub 6."</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. Do you see that?</p> <p>11 A. I see that.</p> <p>12 Q. Okay. Did you take the</p> <p>13 percentages that Professor Cutler listed in</p> <p>14 that reference table and incorporate them</p> <p>15 into your line 10, or did you do something</p> <p>16 additional to those percentages before you</p> <p>17 included them?</p> <p>18 A. Well, I have to answer this</p> <p>19 question in the same way I've answered the</p> <p>20 question about the previous three tables.</p> <p>21 The note notes that this is</p> <p>22 based on the metric analysis conducted in the</p> <p>23 Cutler report, and to refresh myself about</p> <p>24 what was done there and where these -- and</p> <p>25 how to reconstruct these, I'd need to be able</p>	<p>1 each year from 2006 to 2017?</p> <p>2 A. Yes, it does.</p> <p>3 Q. And it says in a footnote,</p> <p>4 "Based on metric analysis in the Cutler</p> <p>5 report, see Table 3.7 sub 1."</p> <p>6 A. I see that, too.</p> <p>7 Q. Okay. Did you take the</p> <p>8 percentages that Professor Cutler had</p> <p>9 reported in the reference table and include</p> <p>10 them here on your line 9, or did you do</p> <p>11 something else to those percentages before</p> <p>12 you included them here?</p> <p>13 A. I knew you were going to ask</p> <p>14 that. The note explains that this is based</p> <p>15 on the analysis in the Cutler report, and I</p> <p>16 have to answer the same way I've answered</p> <p>17 about the previous four tables you've asked</p> <p>18 about.</p> <p>19 In order to reconstruct these</p> <p>20 numbers, I'd need to remind myself about what</p> <p>21 David did in the table referenced here.</p> <p>22 Q. Did you do any independent work</p> <p>23 to arrive at the percentages you list here</p> <p>24 as, quote, "Opioid-Related Percentage of</p> <p>25 Juvenile Cases"?</p>
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<p>1 to remind myself what David did in</p> <p>2 Table 3.4.6.</p> <p>3 Q. Did you do any independent work</p> <p>4 to arrive at the figures that you list here</p> <p>5 as, quote, "Opioid-Related Percentage of</p> <p>6 Adult Charges"?</p> <p>7 MR. SOBOL: Objection. Asked</p> <p>8 and answered.</p> <p>9 THE WITNESS: Well, I don't</p> <p>10 really have anything to add to my</p> <p>11 previous answer, that this is based on</p> <p>12 analysis that David did, and I'd need</p> <p>13 to remind myself about what that</p> <p>14 analysis was and what was contained in</p> <p>15 the table in order to tell you where</p> <p>16 these numbers came from.</p> <p>17 QUESTIONS BY MR. KEYES:</p> <p>18 Q. Would you turn to</p> <p>19 Appendix 4.C-6.1?</p> <p>20 A. I'm there.</p> <p>21 Q. Do you see line 9 says,</p> <p>22 "Opioid-Related Percentage of Juvenile</p> <p>23 Cases"?</p> <p>24 A. I see that yes.</p> <p>25 Q. And it lists a percentage for</p>	<p>1 MR. SOBOL: Objection. Asked</p> <p>2 and answered.</p> <p>3 THE WITNESS: I don't have</p> <p>4 anything to add to my previous answer</p> <p>5 to this. It's based on the Cutler</p> <p>6 analysis, and I'd need to see that</p> <p>7 again in order to remind myself about</p> <p>8 how it was done.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. Would you turn to</p> <p>11 Appendix 4.C-7.1?</p> <p>12 A. Okay. I'm there.</p> <p>13 Q. It's titled "Cuyahoga Sheriff's</p> <p>14 Office Damages"?</p> <p>15 A. I see that.</p> <p>16 Q. Would you turn to line 10,</p> <p>17 "Opioid-Related Percentage of Charges"?</p> <p>18 A. I see that.</p> <p>19 Q. Lists a percentage for each</p> <p>20 year from 2006 to 2017?</p> <p>21 A. I see that.</p> <p>22 Q. It has a footnote that says,</p> <p>23 "Based on metric analysis in the Cutler</p> <p>24 report, see Table 3.4 sub 3"?</p> <p>25 A. I see that, too.</p>

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<p>1 Q. Did you take the percentages</p> <p>2 that Professor Cutler arrived at and reported</p> <p>3 in the reference table and include them here,</p> <p>4 or did you do anything to those percentages</p> <p>5 before you listed them here?</p> <p>6 Same answer?</p> <p>7 A. Well, I have to answer this in</p> <p>8 the same way I've answered about the previous</p> <p>9 five tables you've asked about now.</p> <p>10 This is based on analysis that</p> <p>11 David did, and I need to refresh myself about</p> <p>12 that report in order to see where these</p> <p>13 numbers came from.</p> <p>14 Q. Did you do any independent work</p> <p>15 to arrive at the figures you list here on</p> <p>16 line 10 as, quote, "Opioid-Related Percentage</p> <p>17 of Charges"?</p> <p>18 MR. SOBOL: Objection. Asked</p> <p>19 and answered.</p> <p>20 THE WITNESS: I don't really</p> <p>21 have anything to add to my previous</p> <p>22 answer to this question. It's based</p> <p>23 on the analysis in the Cutler report,</p> <p>24 and I'd need to take another look at</p> <p>25 that in order to determine where these</p>	<p>1 answer to this question as to the previous</p> <p>2 six tables you've asked about.</p> <p>3 The note indicates it's based</p> <p>4 on the metric analysis in the Cutler report,</p> <p>5 and in order to determine the source of these</p> <p>6 numbers, I'd need to go back and remind</p> <p>7 myself about what David's Table 3.4.6 did.</p> <p>8 Q. Did you do any independent work</p> <p>9 to arrive at the figures that you list here</p> <p>10 on line 9 as, quote, "Opioid-Related</p> <p>11 Percentage of Adult Charges"?</p> <p>12 MR. SOBOL: Objection. Asked</p> <p>13 and answered.</p> <p>14 THE WITNESS: Well, I don't</p> <p>15 have anything to add to my previous</p> <p>16 answer on this.</p> <p>17 They're based on the analysis</p> <p>18 in the Cutler report, and I'd need to</p> <p>19 go back and see what was done there to</p> <p>20 remind myself how these numbers were</p> <p>21 constructed.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Would you turn to</p> <p>24 Appendix 4.C-9.1?</p> <p>25 Are you there?</p>
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<p>1 numbers came from.</p> <p>2 QUESTIONS BY MR. KEYES:</p> <p>3 Q. Would you turn to</p> <p>4 Appendix 4.C-8.1?</p> <p>5 A. Okay. I'm there.</p> <p>6 Q. This is Cuyahoga County Jail</p> <p>7 Damages, correct?</p> <p>8 A. I see that.</p> <p>9 Q. Line 9 reports, "Opioid-Related</p> <p>10 Percentage of Adult Charges"?</p> <p>11 A. I see that.</p> <p>12 Q. And it lists a percentage for</p> <p>13 each year from 2006 to 2017?</p> <p>14 A. Yes, it does.</p> <p>15 Q. And it has a footnote that</p> <p>16 says, "Based on metric analysis in the Cutler</p> <p>17 report, see Table 3.4 sub 6"?</p> <p>18 A. I see that, too.</p> <p>19 Q. Okay. Did you simply take the</p> <p>20 percentages that Professor Cutler had arrived</p> <p>21 at and reported in the reference table and</p> <p>22 include them here on line 9, or did you do</p> <p>23 something to those percentages before you</p> <p>24 listed them here?</p> <p>25 A. Well, I have to give the same</p>	<p>1 A. I'm there, yes.</p> <p>2 Q. This is titled, "Cuyahoga</p> <p>3 Office of Medical Examiner Damages."</p> <p>4 Correct?</p> <p>5 A. I see that.</p> <p>6 Q. Line 9 says, "Opioid-Related</p> <p>7 Percentage of Autopsies"?</p> <p>8 A. I see that.</p> <p>9 Q. It lists a percentage for each</p> <p>10 year from 2006 to 2017?</p> <p>11 A. Yes, it does.</p> <p>12 Q. And it has a note that says,</p> <p>13 "Based on metric analysis in the Cutler</p> <p>14 report, see Table 3.8 sub 1"?</p> <p>15 A. I see that.</p> <p>16 Q. Did you simply take the</p> <p>17 percentages that Professor Cutler arrived at</p> <p>18 and reported in the reference table and</p> <p>19 include them here on line 9, or did you do</p> <p>20 something to those percentages?</p> <p>21 A. Well, I have to give the same</p> <p>22 answer here that I've given to a similar</p> <p>23 question in the previous seven tables, which</p> <p>24 is that as the note indicates, it's based on</p> <p>25 the analysis in the Cutler report. And in</p>

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<p style="text-align: right;">Page 437</p> <p>1 order to remind myself about the derivation 2 of these numbers, I would need to take 3 another look at Table 3.8.1. 4 Q. Did you do any independent work 5 to arrive at the figures that are listed on 6 line 9 as, quote, "Opioid-Related Percentage 7 of Autopsies"? 8 MR. SOBOL: Objection. Asked 9 and answered. 10 THE WITNESS: I don't really 11 have anything to add to my previous 12 answer to this question. 13 These numbers are based on the 14 analysis in the Cutler report, and I'd 15 need to remind myself about that 16 before I could give you a precise 17 answer about where these numbers came 18 from. 19 QUESTIONS BY MR. KEYES: 20 Q. Now, if I go through the same 21 exercise with your appendices that are about 22 affected divisions for Summit County as 23 opposed to Cuyahoga County, will your answers 24 be the same? 25 MR. SOBOL: Objection.</p>	<p style="text-align: right;">Page 439</p> <p>1 You'll have to make an 2 inference, if you would like. 3 QUESTIONS BY MR. KEYES: 4 Q. So in the appendices we've 5 reviewed so far for Cuyahoga County, can you 6 tell me anything about the opioid-related 7 percentage of services that you listed beyond 8 the fact that it's somehow based on what 9 Professor Cutler did? 10 MR. SOBOL: Objection. 11 Is that a yes or a no question? 12 MR. KEYES: Yeah. 13 THE WITNESS: Would you mind 14 reading it back to me? I'm sorry. 15 QUESTIONS BY MR. KEYES: 16 Q. Sure. 17 We've reviewed a series of 18 appendices for the different affected 19 divisions for Cuyahoga County. 20 Can you tell me anything about 21 the, quote, "Opioid-Related Percentage of 22 Services" that you listed in the appendix 23 beyond the fact that it's somehow based on 24 what Professor Cutler did? 25 MR. SOBOL: Objection. Form.</p>
<p style="text-align: right;">Page 438</p> <p>1 Which? 2 QUESTIONS BY MR. KEYES: 3 Q. That every time you list an 4 opioid-related percentage of something, where 5 it lists in a footnote that it's based on the 6 metric analysis in the Cutler report, see 7 table such-and-such in the Cutler report, 8 you're going to tell me you can't tell me 9 whether you just took Professor Cutler's 10 numbers or whether you did something to them 11 before you included them in your appendix? 12 MR. SOBOL: Objection. 13 QUESTIONS BY MR. KEYES: 14 Q. Is it fair to say you're going 15 to give me the same answer for each one of 16 those? 17 MR. SOBOL: Objection. 18 Answer it, if you can. 19 THE WITNESS: It's a little 20 hard to anticipate how I would answer 21 questions that haven't been asked yet. 22 But there's -- I see a pattern 23 here in what I'm able to tell you 24 about -- this was all Cuyahoga? Yeah, 25 right.</p>	<p style="text-align: right;">Page 440</p> <p>1 THE WITNESS: Yes. 2 QUESTIONS BY MR. KEYES: 3 Q. What can you tell me? 4 A. Well, I can tell you a number 5 of things. 6 Which table would you like me 7 to talk about? 8 Q. Well, let's go back to the 9 first one. There's go back to 10 Appendix 4.C-1.1. 11 Are you there? 12 A. I'm -- yes, I'm at 4.C-4.1 13 {sic}, yes. 14 Q. Okay. Line 2 says, 15 "Opioid-Related Percentage of Services." 16 A. Wait a second. That's not 17 line 2 here. I'm -- 4.C-4.1? Or 1 -- I'm 18 sorry. 19 Q. No. 4.C-1.1. 20 Do you have that in front of 21 you? 22 A. I do, yeah. 23 Q. Okay. And line 2 says, 24 "Opioid-Related Percentage of Services." 25 Correct?</p>

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<p style="text-align: right;">Page 441</p> <p>1 A. Yes, it does.</p> <p>2 Q. Okay. Can you tell me anything</p> <p>3 about how that was arrived at, other than it</p> <p>4 is somehow based on what Professor Cutler</p> <p>5 did?</p> <p>6 MR. SOBOL: And without putting</p> <p>7 Professor Cutler's report in front of</p> <p>8 him, correct? Correct?</p> <p>9 MR. KEYES: Correct.</p> <p>10 THE WITNESS: Well, I can tell</p> <p>11 you some things about this.</p> <p>12 I understand what the task was</p> <p>13 that Professor Cutler undertook, which</p> <p>14 was to determine a percent of the</p> <p>15 ADAMHS -- this is ADAMHS Board? --</p> <p>16 yeah, the ADAMHS Board activities that</p> <p>17 were attributable to opioids.</p> <p>18 And that involved a two-step</p> <p>19 process: determining how much of</p> <p>20 those services were drug-related and</p> <p>21 then how much of the drug-related were</p> <p>22 opioid-related.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. And did you do anything</p> <p>25 yourself beyond take the percentages from</p>	<p style="text-align: right;">Page 443</p> <p>1 This time it references Cutler</p> <p>2 report Table 3.5 sub 6?</p> <p>3 A. Yeah, I see that.</p> <p>4 MR. SOBOL: Which other chart?</p> <p>5 Objection to the form. You</p> <p>6 said "like every other chart."</p> <p>7 Which other chart?</p> <p>8 MR. KEYES: Like every other</p> <p>9 chart we've reviewed in the deposition</p> <p>10 today.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Did you do any independent work</p> <p>13 to arrive at the opioid-related percentage of</p> <p>14 services that you list on line 2?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 THE WITNESS: Well, my answer</p> <p>17 here is going to be the same as it was</p> <p>18 for Cuyahoga in this case: that as</p> <p>19 the note indicates, it's based on the</p> <p>20 metric analysis in the Cutler report,</p> <p>21 and in order to determine where these</p> <p>22 numbers came from more precisely, I'd</p> <p>23 need to be able to remind myself about</p> <p>24 what that -- what happened in that</p> <p>25 table from David's report.</p>
<p style="text-align: right;">Page 442</p> <p>1 Professor Cutler?</p> <p>2 A. Well, this sounds like the</p> <p>3 first set of questions you asked. And what I</p> <p>4 can tell you, based on note 2 here, is that</p> <p>5 this is based on the metrics in Cutler's</p> <p>6 report. And in order to be more specific</p> <p>7 about that, I'd have to tell you -- I'd have</p> <p>8 to take a look at what David did and remind</p> <p>9 myself.</p> <p>10 Q. Would you turn to</p> <p>11 Appendix 4.D-1.1?</p> <p>12 Are you there?</p> <p>13 A. Yes.</p> <p>14 Q. This says the "Summit ADM Board</p> <p>15 Damages"?</p> <p>16 A. Yes.</p> <p>17 Q. Line 2 says, "Opioid-Related</p> <p>18 Percentage of Services"?</p> <p>19 A. I see that.</p> <p>20 Q. It has a percentage for each</p> <p>21 year from 2006 to 2017?</p> <p>22 A. Yes, it does.</p> <p>23 Q. And it, like every other chart,</p> <p>24 says, "based on metric analysis in the Cutler</p> <p>25 report."</p>	<p style="text-align: right;">Page 444</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Would you turn to</p> <p>3 Appendix 4.D-2.1?</p> <p>4 A. Okay. I'm there.</p> <p>5 Q. Do you see line 9 says,</p> <p>6 "Opioid-Related Percentage of Custodies"?</p> <p>7 A. I see that, yes.</p> <p>8 Q. And it lists a percentage for</p> <p>9 each year from 2006 to 2017?</p> <p>10 A. Yes, it does.</p> <p>11 Q. And it has a footnote that also</p> <p>12 says, "Based on metric analysis in the Cutler</p> <p>13 report," and it references Cutler report</p> <p>14 Table 3.6 sub 2?</p> <p>15 A. I see that, yes.</p> <p>16 Q. Did you do any independent work</p> <p>17 to arrive at the figures listed here on</p> <p>18 line 9 as, quote, "Opioid-Related Percentage</p> <p>19 of Custodies"?</p> <p>20 A. I have to answer this in the</p> <p>21 same way that I've answered this series of</p> <p>22 questions about other appendix tables. And</p> <p>23 what I can tell on the basis of note 9, which</p> <p>24 I knew, is that it's based on the analysis in</p> <p>25 the Cutler report.</p>

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<p>1 In order to figure out more</p> <p>2 precisely what these percentages correspond</p> <p>3 to, I'd need to go back and see -- remind</p> <p>4 myself about what happened in Cutler 3.6.2.</p> <p>5 Q. Would you turn to</p> <p>6 Appendix 4.D-3.1?</p> <p>7 A. Okay. I'm there.</p> <p>8 Q. Are you there?</p> <p>9 A. I'm there.</p> <p>10 Q. This is titled "Summit</p> <p>11 Prosecutor Damages."</p> <p>12 Correct?</p> <p>13 A. I see that, yes.</p> <p>14 Q. Line 10 says, "Opioid-Related</p> <p>15 Percentage of Crimes"?</p> <p>16 A. I see that.</p> <p>17 Q. It lists a percentage for each</p> <p>18 year from 2006 to 2017?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. And it has a note that says,</p> <p>21 "This is based on the metric analysis in the</p> <p>22 Cutler report, see Table 3.4 sub 9."</p> <p>23 A. I see that, too.</p> <p>24 Q. Did you do any independent work</p> <p>25 to arrive at the figures that you list here</p>	<p>1 is constructed in the same way. I'm</p> <p>2 not sure what you're asking.</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. I'm asking, is this also</p> <p>5 based -- somehow based on what Professor</p> <p>6 Cutler did?</p> <p>7 A. Well, as the note says, yes,</p> <p>8 this is based on the metric analysis in the</p> <p>9 Cutler report.</p> <p>10 Q. Did you do any independent work</p> <p>11 to arrive at the figures listed on line 10</p> <p>12 as, quote, "Opioid-Related Percentage of</p> <p>13 Crimes"?</p> <p>14 A. Well, I have to answer this in</p> <p>15 the same way that I've answered questions</p> <p>16 about a series of other appendices that we've</p> <p>17 talked about this morning. And the note</p> <p>18 indicates it's based on the metric analysis</p> <p>19 in the Cutler report, and in order to</p> <p>20 determine more precisely where these</p> <p>21 particular percentages came from, I'd need to</p> <p>22 go back and remind myself what happened in</p> <p>23 Table 3.4.9.</p> <p>24 Q. Okay. Would you turn to</p> <p>25 Appendix 4.D-5.1?</p>
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<p>1 on line 10 as being, quote, "Opioid-Related</p> <p>2 Percentage of Crimes"?</p> <p>3 A. I have to answer this in the</p> <p>4 same way I've answered the series of previous</p> <p>5 questions about different appendix tables,</p> <p>6 which is that as the note indicates, it's</p> <p>7 based on the metric analysis in the Cutler</p> <p>8 report. And in order to determine more</p> <p>9 precisely where these figures came from, I</p> <p>10 would need to go back and remind myself about</p> <p>11 what happened in Table 3.4.9.</p> <p>12 Q. Could you turn to</p> <p>13 Appendix 4.D-4.1?</p> <p>14 A. Okay. I'm there.</p> <p>15 Q. Okay. Line -- this is titled</p> <p>16 "Summit Court of Common Pleas Damages"?</p> <p>17 A. That I see.</p> <p>18 Q. Line 10 says, "Opioid-Related</p> <p>19 Percentage of Crimes"?</p> <p>20 A. I see that.</p> <p>21 Q. You going to tell me the same</p> <p>22 thing about how those percentages were</p> <p>23 arrived at?</p> <p>24 MR. SOBOL: Objection.</p> <p>25 THE WITNESS: Well, the table</p>	<p>1 A. Okay. I'm there.</p> <p>2 Q. This is Summit Juvenile Court</p> <p>3 Damages?</p> <p>4 A. I see that.</p> <p>5 Q. Do you see line 9 says,</p> <p>6 "Opioid-Related Percentage of Juvenile</p> <p>7 Cases"?</p> <p>8 A. I see that.</p> <p>9 Q. And it again lists a percentage</p> <p>10 for each year from 2006 to 2017?</p> <p>11 A. I see that.</p> <p>12 Q. And it also, like every other</p> <p>13 chart that we've reviewed, says, "Based on</p> <p>14 metric analysis in the Cutler report"?</p> <p>15 A. I see.</p> <p>16 Q. And this time it references</p> <p>17 Table 3.7 sub 2?</p> <p>18 A. I see that.</p> <p>19 Q. Did you do any independent work</p> <p>20 to arrive at the percentages you list here on</p> <p>21 line 9 as, quote, "Opioid-Related Percentage</p> <p>22 of Juveniles Cases"?</p> <p>23 A. Well, I have to answer this in</p> <p>24 the same way that I've answered questions</p> <p>25 about a series of other tables you've asked</p>

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<p>1 about this morning. And as the note</p> <p>2 indicates, it's based on the metrics in the</p> <p>3 Cutler report, and in order to determine more</p> <p>4 precisely where these numbers came from, I'd</p> <p>5 need to remind myself about what happened in</p> <p>6 Cutler 3.7.2.</p> <p>7 Q. Would you turn to</p> <p>8 Appendix 4.D-6.1?</p> <p>9 A. Okay. I'm there.</p> <p>10 Q. This is Summit Sheriff's Office</p> <p>11 Damages, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Line 10 says, "Opioid-Related</p> <p>14 Percentage of Crimes"?</p> <p>15 A. I see that.</p> <p>16 Q. Lists a percentage for each</p> <p>17 year from 2006 to 2017?</p> <p>18 A. I see that.</p> <p>19 Q. And it, like every other chart,</p> <p>20 references that it's based on the metric</p> <p>21 analysis in the Cutler report, and it says,</p> <p>22 "See Table 3.4 sub 9 in the Cutler report,"</p> <p>23 correct?</p> <p>24 A. Yes, it does.</p> <p>25 Q. Did you do any independent work</p>	<p>1 Q. And it also references in</p> <p>2 footnote 9 that it's based on the metric</p> <p>3 analysis in the Cutler report, and it says,</p> <p>4 "see Table 3.4 sub 12"?</p> <p>5 A. I see that.</p> <p>6 Q. Okay. Did you do any</p> <p>7 independent work to arrive at the percentages</p> <p>8 that are listed on line 9 as, quote,</p> <p>9 "Opioid-Related Percentage of Prisoners"?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 THE WITNESS: Well, I have to</p> <p>12 answer this in the same way that I've</p> <p>13 answered questions about previous</p> <p>14 tables.</p> <p>15 The note indicates that line 9</p> <p>16 is based on the metric analysis in the</p> <p>17 Cutler report and makes a reference to</p> <p>18 a particular table there. And in</p> <p>19 order for me to reconstruct where</p> <p>20 these percentages came from, I'd need</p> <p>21 to go back and take a look at the</p> <p>22 table referred to in note 9.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. Please turn to</p> <p>25 Appendix 4.D-8.1.</p>
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<p>1 to arrive at the figures listed on line 10</p> <p>2 as, quote, "Opioid-Related Percentage of</p> <p>3 Crimes"?</p> <p>4 A. Well, I have to answer this in</p> <p>5 the same way I've answered questions about a</p> <p>6 series of other tables we've talked about</p> <p>7 this morning.</p> <p>8 As the note indicates, my work</p> <p>9 is based on the metrics in the Cutler report,</p> <p>10 and in order to determine more precisely</p> <p>11 where these percentages came from, I'd need</p> <p>12 to be able to review what happened in Cutler</p> <p>13 3.4.9.</p> <p>14 Q. Would you turn to</p> <p>15 Appendix 4.D-7.1?</p> <p>16 A. Okay. I'm there.</p> <p>17 Q. Do you see that it's titled</p> <p>18 "Summit County Jail Damages"?</p> <p>19 A. I see that.</p> <p>20 Q. And you have line 9,</p> <p>21 "Opioid-Related Percentage of Prisoners"?</p> <p>22 A. I see that.</p> <p>23 Q. It lists a percentage for each</p> <p>24 year from 2006 to 2017?</p> <p>25 A. I see that, too.</p>	<p>1 A. Okay.</p> <p>2 Q. This is titled "Summit</p> <p>3 Alternative Corrections Damages"?</p> <p>4 A. I see that.</p> <p>5 Q. Line 5 says, "Opioid-Related</p> <p>6 Percentage of Prisoners"?</p> <p>7 A. I see that.</p> <p>8 Q. It has a percentage for each</p> <p>9 year from 2006 to 2017?</p> <p>10 A. Yes, it does.</p> <p>11 Q. And it also has a footnote that</p> <p>12 references being based on the metric analysis</p> <p>13 in the Cutler report: "See Table 3.4 sub 12</p> <p>14 of the Cutler report"?</p> <p>15 A. I see that, too.</p> <p>16 Q. Did you do any independent work</p> <p>17 to arrive at the percentages that are listed</p> <p>18 on line 5 as, quote, "Opioid-Related</p> <p>19 Percentage of Prisoners"?</p> <p>20 MR. SOBOL: Objection.</p> <p>21 THE WITNESS: Well, I have to</p> <p>22 answer that in the same way that I've</p> <p>23 answered questions about a series of</p> <p>24 other tables we've talked about this</p> <p>25 morning.</p>

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<p>1 And as the note says, these</p> <p>2 percentages are based on the metric</p> <p>3 analysis in the Cutler report, and in</p> <p>4 order to figure out more precisely</p> <p>5 where these numbers come from, I'd</p> <p>6 need to be able to remind myself about</p> <p>7 what happened in Table 3.4.12.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. Could you turn to</p> <p>10 Appendix 4.D-9.1?</p> <p>11 A. I'm there.</p> <p>12 Q. This is titled "Summit Adult</p> <p>13 Probation Damages"?</p> <p>14 A. I see that.</p> <p>15 Q. Line 10 says, "Opioid-Related</p> <p>16 Percentage of Crimes"?</p> <p>17 A. I see that.</p> <p>18 Q. It lists a percentage for each</p> <p>19 year from 2006 to 2017?</p> <p>20 A. Yes, it does.</p> <p>21 Q. And it, like every other chart,</p> <p>22 has a footnote that says, "Based on metric</p> <p>23 analysis in the Cutler report. See Table 3.4</p> <p>24 sub 9 of the Cutler report," correct?</p> <p>25 A. I see that.</p>	<p>1 year from 2006 to 2017?</p> <p>2 A. Yes, it does.</p> <p>3 Q. And it references in a footnote</p> <p>4 that it's "Based on the metric analysis in</p> <p>5 the Cutler report. See Table 3.8 sub 2 of</p> <p>6 the Cutler report."</p> <p>7 Correct?</p> <p>8 A. I see that.</p> <p>9 Q. Did you do any independent work</p> <p>10 to arrive at the percentages that you list on</p> <p>11 line 9 as being "Opioid-Related Percentage of</p> <p>12 Autopsies"?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 THE WITNESS: Well, I have to</p> <p>15 answer this in the same way I've</p> <p>16 answered questions about a series of</p> <p>17 other tables we've talked about this</p> <p>18 morning.</p> <p>19 And as the note indicates, the</p> <p>20 percentages here are based on the</p> <p>21 analysis in a particular place in the</p> <p>22 Cutler report, and in order to</p> <p>23 reconstruct my numbers, I'd need to</p> <p>24 remind myself about what happened in</p> <p>25 Cutler 3.8.2.</p>
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<p>1 Q. Did you do any independent work</p> <p>2 to arrive at the figures that you list here</p> <p>3 as being, quote, "the opioid-related</p> <p>4 percentage of crimes"?</p> <p>5 A. Well, I have to answer this in</p> <p>6 the same way I've answered questions about a</p> <p>7 series of other tables we've talked about</p> <p>8 this morning.</p> <p>9 And as the note indicates, it's</p> <p>10 based on the metric analysis in the Cutler</p> <p>11 report and references a particular table.</p> <p>12 And for me to be able to reconstruct these</p> <p>13 percentages, I'd need to go back and remind</p> <p>14 myself what happened in Table 3.4.9.</p> <p>15 Q. Would you turn to</p> <p>16 Appendix 4.D-10.1?</p> <p>17 A. Okay.</p> <p>18 Q. This is titled "Summit Medical</p> <p>19 Examiner Damages."</p> <p>20 Correct?</p> <p>21 A. I see that.</p> <p>22 Q. Line 9 says, "Opioid-Related</p> <p>23 Percentage Autopsies"?</p> <p>24 A. I see that, too.</p> <p>25 Q. It lists a percentage for each</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Earlier today you said you</p> <p>3 talked to Ms. Kaminski at Compass Lexecon to</p> <p>4 remind you about certain things you had done</p> <p>5 to calculate crime statistics or the</p> <p>6 prevalence of OUD.</p> <p>7 MR. SOBOL: Objection.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. Would you also talk to</p> <p>10 Ms. Kaminski to remind you how you arrived at</p> <p>11 these various percentages that we've covered</p> <p>12 in these various charts?</p> <p>13 MR. SOBOL: Objection. Form.</p> <p>14 Asked and answered. Compound.</p> <p>15 THE WITNESS: There was a verb</p> <p>16 in there I didn't hear.</p> <p>17 Was it could, would or did?</p> <p>18 QUESTIONS BY MR. KEYES:</p> <p>19 Q. Would.</p> <p>20 A. Would I talk to her?</p> <p>21 MR. SOBOL: Why don't we get a</p> <p>22 fresh question.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. Well, would you talk to</p> <p>25 Ms. Kaminski to figure out how you arrived at</p>

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<p>1 the percentages that you list here on the</p> <p>2 lines that we've just spent the last</p> <p>3 30 minutes covering?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 THE WITNESS: Would I? That's</p> <p>6 conditional.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. If you wanted to know the</p> <p>9 answer, in that condition, would you go to</p> <p>10 Ms. Kaminski?</p> <p>11 MR. SOBOL: Objection.</p> <p>12 THE WITNESS: Okay. So what's</p> <p>13 the question?</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. If you wanted to know where</p> <p>16 these percentages came from and what you did</p> <p>17 with these percentages, would you go to</p> <p>18 Ms. Kaminski to remind you what you did?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 MR. SOBOL: Which percentages?</p> <p>22 MR. KEYES: All of the</p> <p>23 percentages we've talked about this</p> <p>24 morning.</p> <p>25 MR. SOBOL: I don't know which</p>	<p>1 a chart or a table from Professor Cutler.</p> <p>2 And every single time you gave</p> <p>3 me your answer: I'll have to give the same</p> <p>4 answer that I gave the last time, which is,</p> <p>5 I'd have to go look at Professor Cutler's</p> <p>6 report to figure out where these percentages</p> <p>7 came from.</p> <p>8 And every time I asked you,</p> <p>9 "Did you do any independent work?" you said,</p> <p>10 "I'd have to give you the same answer: I</p> <p>11 don't know."</p> <p>12 A. I'm laughing with you.</p> <p>13 Q. Okay. So you could go look at</p> <p>14 Professor Cutler's report, but I'm asking you</p> <p>15 questions about your report.</p> <p>16 A. All right.</p> <p>17 Q. And your report says nothing</p> <p>18 other than "I am doing something based on</p> <p>19 Cutler's metrics."</p> <p>20 My question is: If you want to</p> <p>21 figure out what you did for this report to</p> <p>22 get these percentages, who would you go to to</p> <p>23 get that answer?</p> <p>24 MR. SOBOL: Objection.</p> <p>25</p>
Page 458	Page 460
<p>1 those are. From Cutler or from</p> <p>2 McGuire?</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. You can answer.</p> <p>5 MR. SOBOL: Well, I don't</p> <p>6 understand the question.</p> <p>7 MR. KEYES: Then you can</p> <p>8 object. You did. Now he can answer.</p> <p>9 MR. SOBOL: If he can.</p> <p>10 THE WITNESS: Well, I have to</p> <p>11 say it depends.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. On what?</p> <p>14 A. On what exactly you're talking</p> <p>15 about in terms of what I'm refreshing myself</p> <p>16 about.</p> <p>17 Q. Well, I've just gone through a</p> <p>18 bunch of charts, some for Cuyahoga County,</p> <p>19 some for Summit County, and every single</p> <p>20 chart has a line that says "opioid-related</p> <p>21 percentage of" something.</p> <p>22 And every single time there's a</p> <p>23 footnote, and every single time that footnote</p> <p>24 says it's based on Professor Cutler's</p> <p>25 metrics, and every single time it references</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Would it be Ms. Kaminski or</p> <p>3 someone else at Compass Lexecon?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 Is there some part of the</p> <p>6 question that you'd like the witness</p> <p>7 to agree with your speech about, or do</p> <p>8 you want him to answer your questions</p> <p>9 that you put?</p> <p>10 THE WITNESS: Well, it depends</p> <p>11 on what the particular percentage is.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. So would you go to Ms. Kaminski</p> <p>14 for some percentages but someone else at</p> <p>15 Compass Lexecon for other percentages?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 If you can answer it, fine. I</p> <p>18 don't know what he's talking about.</p> <p>19 If you can figure it out --</p> <p>20 MR. KEYES: Enough of the</p> <p>21 speaking objections. If he doesn't</p> <p>22 know what I'm talking about, he's</p> <p>23 perfectly capable of saying that.</p> <p>24 QUESTIONS BY MR. KEYES:</p> <p>25 Q. I need your testimony, not what</p>

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<p style="text-align: right;">Page 461</p> <p>1 you're coached to say.</p> <p>2 MR. SOBOL: Well, you can call</p> <p>3 me Coach Belichick, and I would be</p> <p>4 flattered, but that's not what I'm</p> <p>5 doing.</p> <p>6 I'm just trying to figure out</p> <p>7 what it is that you're asking and</p> <p>8 making sure that the witness</p> <p>9 understands it, too.</p> <p>10 If you don't want to make</p> <p>11 yourself better understood, then go</p> <p>12 for it, but then we'll end up with a</p> <p>13 fairly inadequate transcript on your</p> <p>14 part.</p> <p>15 Do you understand the question</p> <p>16 before you, Mr. Witness?</p> <p>17 THE WITNESS: I think I can be</p> <p>18 somewhat responsive, which is to say</p> <p>19 in many cases this is something I</p> <p>20 would be capable of doing myself.</p> <p>21 And I might need to ask some --</p> <p>22 at Compass Lex for some clarification,</p> <p>23 but it really depends on what</p> <p>24 you're -- more specifically you're</p> <p>25 talking about.</p>	<p style="text-align: right;">Page 463</p> <p>1 is their primary responsibility is public</p> <p>2 safety, which involves a number of</p> <p>3 safety-related activities.</p> <p>4 They're also responsible for</p> <p>5 traffic control, if I could use kind of a</p> <p>6 layperson's word about that. And some</p> <p>7 community education, community relations.</p> <p>8 Q. Did you talk to anyone who</p> <p>9 works for the Cuyahoga County Police</p> <p>10 Department?</p> <p>11 A. I don't recall.</p> <p>12 Q. Did you read the deposition</p> <p>13 testimony of anyone who works for the</p> <p>14 Cuyahoga County Police Department?</p> <p>15 A. I may have. I don't recall.</p> <p>16 Q. Do you have an understanding as</p> <p>17 to what the responsibilities of the Summit</p> <p>18 County Police Department are?</p> <p>19 A. Isn't it sheriff?</p> <p>20 Q. Is there a police department in</p> <p>21 Summit County?</p> <p>22 A. I don't remember the title. I</p> <p>23 thought it might have been sheriff, but...</p> <p>24 Q. Okay. So for Summit County you</p> <p>25 think there's a sheriff?</p>
<p style="text-align: right;">Page 462</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Last week you described your</p> <p>3 approach for identifying so-called affected</p> <p>4 costs?</p> <p>5 A. Yes.</p> <p>6 Q. And you attempted to articulate</p> <p>7 your approach for identifying affected costs?</p> <p>8 A. Yes.</p> <p>9 Q. And a number of times you cited</p> <p>10 the police as an example of how you would go</p> <p>11 about identifying an affected cost,</p> <p>12 identifying whether it was fixed or variable,</p> <p>13 identifying if it was overhead.</p> <p>14 Do you recall that?</p> <p>15 A. I do, yes.</p> <p>16 Q. Okay. So can you identify for</p> <p>17 me what the responsibilities of the Cuyahoga</p> <p>18 County Police Department are?</p> <p>19 A. In total? All the</p> <p>20 responsibilities of the Cuyahoga County</p> <p>21 Police Department?</p> <p>22 Q. Well, your general</p> <p>23 understanding of the Cuyahoga County Police</p> <p>24 Department's responsibilities.</p> <p>25 A. Okay. Well, my understanding</p>	<p style="text-align: right;">Page 464</p> <p>1 A. I'm -- I guess I'm asking, but</p> <p>2 I know I can't do that, so...</p> <p>3 I guess if I can -- see if I</p> <p>4 understand where the question is. The</p> <p>5 question is, did I speak to someone in Summit</p> <p>6 County law enforcement?</p> <p>7 MR. SOBOL: Objection.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. No.</p> <p>10 My question was: Did you</p> <p>11 speak -- do you have an understanding of what</p> <p>12 the responsibilities are of a Summit County</p> <p>13 Police Department?</p> <p>14 A. Responsibilities. The</p> <p>15 responsibilities would be very similar.</p> <p>16 Q. Did you talk to anyone who</p> <p>17 works for a Summit County Police Department?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did you read the deposition</p> <p>20 testimony of anyone who works for a Summit</p> <p>21 County Police Department?</p> <p>22 A. I may have. I don't remember.</p> <p>23 Q. Okay. And does Summit County</p> <p>24 have a police department?</p> <p>25 A. They have a -- I don't remember</p>

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<p>1 whether it's called sheriff or police</p> <p>2 department, but they have a function that</p> <p>3 would have gone under one of those two names.</p> <p>4 Q. Does Cuyahoga County have a</p> <p>5 police department?</p> <p>6 A. It's the same.</p> <p>7 Q. Okay. And do you have an</p> <p>8 understanding as to what the differences are</p> <p>9 between a police department and a sheriff's</p> <p>10 department?</p> <p>11 A. Not really, no, I don't</p> <p>12 understand in terms of the -- whatever the,</p> <p>13 you know, the connotations of the</p> <p>14 jurisdiction each of those departments would</p> <p>15 have.</p> <p>16 Q. Do you have an understanding as</p> <p>17 to whether there are differences between a</p> <p>18 police department and a sheriff's</p> <p>19 department --</p> <p>20 MR. SOBOL: Objection to form.</p> <p>21 QUESTIONS BY MR. KEYES:</p> <p>22 Q. -- in Cuyahoga County?</p> <p>23 A. As I said, I don't have an</p> <p>24 appreciation of the -- whatever the</p> <p>25 differences are between those two forms of</p>	<p>1 report, or is this a memory test?</p> <p>2 MR. KEYES: I'm asking him to</p> <p>3 identify what the opportunity costs</p> <p>4 was.</p> <p>5 THE WITNESS: The opportunity</p> <p>6 costs in economics is measured in</p> <p>7 dollars, and it's in my report.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. What activity or activities did</p> <p>10 the Summit County ADM Board forego because it</p> <p>11 spent those dollars on opioid-related</p> <p>12 activities?</p> <p>13 MR. SOBOL: Objection. Asked</p> <p>14 and answered.</p> <p>15 THE WITNESS: This is something</p> <p>16 that we talked about last time in some</p> <p>17 detail, and the important thing that I</p> <p>18 need to say about this from the</p> <p>19 standpoint of an economist is the way</p> <p>20 opportunity cost works is that it's</p> <p>21 not necessary to identify the precise</p> <p>22 nature of the activities that were not</p> <p>23 undertaken.</p> <p>24 And if you remember last time,</p> <p>25 I gave you the example of the</p>
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<p>1 law enforcement.</p> <p>2 Q. How about Summit County?</p> <p>3 MR. SOBOL: Objection.</p> <p>4 THE WITNESS: I'm not sure what</p> <p>5 you're asking.</p> <p>6 QUESTIONS BY MR. KEYES:</p> <p>7 Q. Do you have an understanding as</p> <p>8 to whether there are differences between a</p> <p>9 police department and a sheriff's department</p> <p>10 in Summit County?</p> <p>11 A. Well, I would have to give the</p> <p>12 same answer I gave for Cuyahoga. I don't</p> <p>13 have an appreciation of the differences in,</p> <p>14 you know, authority of the police and</p> <p>15 sheriff's department.</p> <p>16 Q. Okay. You identified the</p> <p>17 Summit County ADM Board as an affected</p> <p>18 division, to use your terminology, correct?</p> <p>19 A. Yes, that's correct.</p> <p>20 Q. Okay. So for the Summit County</p> <p>21 ADM Board, what was the opportunity cost of</p> <p>22 the opioid-related expenditures that you</p> <p>23 quantified?</p> <p>24 MR. SOBOL: Objection.</p> <p>25 Do you want him to refer to his</p>	<p>1 household that had an accident with</p> <p>2 their car and it cost them \$75. The</p> <p>3 opportunity cost of those funds is</p> <p>4 \$75. That's the economic approach to</p> <p>5 opportunity cost.</p> <p>6 It's not necessary for me as an</p> <p>7 economist to say, well, they didn't go</p> <p>8 out to dinner one night or they, you</p> <p>9 know, didn't do whatever. The</p> <p>10 opportunity cost is \$75.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Did you identify whether Summit</p> <p>13 County ADM Board suffered any harm because it</p> <p>14 forewent an opportunity because it was</p> <p>15 spending dollars on opioid-related</p> <p>16 activities?</p> <p>17 MR. SOBOL: Objection.</p> <p>18 THE WITNESS: What do you mean</p> <p>19 by the board suffering harm?</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. Well, I don't know that I can</p> <p>22 be more specific.</p> <p>23 In your work, you identified</p> <p>24 the dollars that you said were devoted to</p> <p>25 opioid-related activities. You said that had</p>

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<p>1 an opportunity cost.</p> <p>2 A. Yes.</p> <p>3 Q. I asked you what the ADM Board</p> <p>4 forewent, something they didn't do, because</p> <p>5 they were spending those dollars on</p> <p>6 opioid-related activities.</p> <p>7 You said you don't need to look</p> <p>8 at that.</p> <p>9 I'm asking: Did you look at</p> <p>10 whether the Summit County ADM Board suffered</p> <p>11 or incurred any harm because it forewent</p> <p>12 another activity because it was spending</p> <p>13 dollars on the opioid problem?</p> <p>14 MR. SOBOL: Okay. And</p> <p>15 objection.</p> <p>16 There was a speech that I</p> <p>17 assume that the questioner does not</p> <p>18 expect you to be buying into, but</p> <p>19 there was a question at the end of it</p> <p>20 which I assume the questioner was</p> <p>21 asking you to respond to.</p> <p>22 THE WITNESS: I'm still a</p> <p>23 little confused about what you mean by</p> <p>24 the board being harmed.</p> <p>25 The board is a board, which</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. But you were talking about</p> <p>3 opportunity costs. You've already talked at</p> <p>4 length about opportunity costs. I'm asking</p> <p>5 about harm.</p> <p>6 A. Harm.</p> <p>7 Q. Harm.</p> <p>8 Did you identify any harm that</p> <p>9 the Summit County ADM Board suffered or</p> <p>10 incurred --</p> <p>11 MR. SOBOL: Objection.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. -- because it didn't spend</p> <p>14 money on something else because it was</p> <p>15 spending those dollars on opioid-related</p> <p>16 activities?</p> <p>17 MR. SOBOL: Objection. Asked</p> <p>18 and answered now.</p> <p>19 THE WITNESS: Okay. So I</p> <p>20 understand you're not asking about</p> <p>21 opportunity costs. I'm not sure then</p> <p>22 what harm means in your question.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. So you can't -- you don't know</p> <p>25 what harm means; that's your testimony?</p>
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<p>1 are -- which consists of people on the</p> <p>2 board. That's what I understand the</p> <p>3 board to be.</p> <p>4 Are you asking how they would</p> <p>5 be harmed?</p> <p>6 QUESTIONS BY MR. KEYES:</p> <p>7 Q. No.</p> <p>8 I'm asking how the Summit</p> <p>9 County ADM Board, as the affected division</p> <p>10 you identified --</p> <p>11 A. Okay.</p> <p>12 Q. -- whether it suffered any harm</p> <p>13 because it forewent another activity because</p> <p>14 it was spending dollars on opioid-related</p> <p>15 services.</p> <p>16 MR. SOBOL: Objection.</p> <p>17 THE WITNESS: Okay. Well, I am</p> <p>18 interpreting your question as an</p> <p>19 opportunity cost question, which is to</p> <p>20 say something had been foregone</p> <p>21 because of the funds to go into</p> <p>22 opioids, and there's a dollar metric</p> <p>23 of that.</p> <p>24 And then I'm a little bit lost</p> <p>25 in the question. So, sorry.</p>	<p>1 MR. SOBOL: Objection. It's</p> <p>2 not his testimony.</p> <p>3 He doesn't know what you mean</p> <p>4 by it.</p> <p>5 THE WITNESS: I can't answer</p> <p>6 until -- if you could just use another</p> <p>7 example or use another word or help me</p> <p>8 explain -- help me understand what</p> <p>9 harm means in the question.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. How about injury? Did the</p> <p>12 Summit County ADM Board suffer any injury</p> <p>13 because it spent money on opioid-related</p> <p>14 activities rather than the thing it gave up?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 THE WITNESS: I'm still having</p> <p>17 a hard time here.</p> <p>18 Injury is a kind of metaphor.</p> <p>19 You know, injury, I know what an</p> <p>20 injury is. I interpret you using that</p> <p>21 term as a kind of metaphor here, but</p> <p>22 I'm not sure as a metaphor for what.</p> <p>23 I'm happy to answer the</p> <p>24 question. I'm just not sure what the</p> <p>25 direction is you're trying to get at.</p>

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<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. In 2006 -- that's one of the</p> <p>3 years covered by your damages report,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. In 2006, if the Summit County</p> <p>7 ADM Board did not spend the dollars you</p> <p>8 quantified on opioid-related work, what would</p> <p>9 it have spent the money on?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 THE WITNESS: This gets back to</p> <p>12 the discussion of opportunity costs</p> <p>13 and how, from an economist point of</p> <p>14 view, to be able to quantify in dollar</p> <p>15 terms the opportunity costs. It's not</p> <p>16 necessary for me to know what else</p> <p>17 they would have done with the money.</p> <p>18 Just like with the household</p> <p>19 having to pay the \$75 to fix their</p> <p>20 car, it's not important in assessing</p> <p>21 opportunity costs to know whether, you</p> <p>22 know, the teenager spent it, the mom</p> <p>23 would have spent it, the dad would</p> <p>24 have spent it. Those -- I don't need</p> <p>25 to know those questions. I don't need</p>	<p>1 opportunity costs for me to know what</p> <p>2 the alternative -- the money would</p> <p>3 have been spent on alternatively.</p> <p>4 Just like in the case of the</p> <p>5 household, an economist assesses the</p> <p>6 opportunity cost of spending on</p> <p>7 something without needing to know what</p> <p>8 the funds would have been devoted to</p> <p>9 in the absence of that cost.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. Would your answer be any</p> <p>12 different if I picked 2007 instead of 2006?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 THE WITNESS: I don't see</p> <p>15 anything that would be different with</p> <p>16 2007, but your -- are you referring to</p> <p>17 a series of questions or a particular</p> <p>18 question?</p> <p>19 QUESTIONS BY MR. KEYES:</p> <p>20 Q. I'll ask you a question about</p> <p>21 2006.</p> <p>22 A. You asked me a series of</p> <p>23 questions about 2006.</p> <p>24 Q. And now I'm saying 2007.</p> <p>25 MR. SOBOL: Objection then.</p>
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<p>1 to know the answers to those</p> <p>2 questions.</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. Separate from whether you need</p> <p>5 to know, did you ask the question, and did</p> <p>6 you look into that as part of your work on</p> <p>7 this case?</p> <p>8 MR. SOBOL: Objection.</p> <p>9 THE WITNESS: I looked into</p> <p>10 what I needed to know in order to</p> <p>11 identify opportunity costs in a</p> <p>12 reliable -- a reliable way that's in</p> <p>13 line with economic practice in this</p> <p>14 field.</p> <p>15 QUESTIONS BY MR. KEYES:</p> <p>16 Q. Did you conduct any factual</p> <p>17 inquiry to determine what the Summit County</p> <p>18 ADM Board would have spent the money on in</p> <p>19 2006 if it had not spent that money on what</p> <p>20 you quantified as opioid-related work?</p> <p>21 MR. SOBOL: Objection. Asked</p> <p>22 and answered.</p> <p>23 THE WITNESS: It wasn't</p> <p>24 necessary for me to be able to</p> <p>25 determine a reliable estimate of</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Did you conduct any factual</p> <p>3 inquiry to determine what the Summit County</p> <p>4 ADM Board would have spent the money on in</p> <p>5 2007 if it had not spent that money on what</p> <p>6 you quantified as opioid-related work?</p> <p>7 A. Okay. I do have to answer this</p> <p>8 in the same way that I referred to in the</p> <p>9 earlier year. In order to develop a reliable</p> <p>10 estimate of opportunity costs, it's not</p> <p>11 necessary for an economist to be able to</p> <p>12 identify what exactly the funds would have</p> <p>13 been used for. They could have been used</p> <p>14 for, you know, different purposes.</p> <p>15 Q. And if I ask the same question</p> <p>16 using 2008 instead of 2007, would your answer</p> <p>17 be the same?</p> <p>18 MR. SOBOL: Objection.</p> <p>19 THE WITNESS: Okay. The same</p> <p>20 single question --</p> <p>21 QUESTIONS BY MR. KEYES:</p> <p>22 Q. Yes.</p> <p>23 A. -- you're referring to?</p> <p>24 My answer would be the same for</p> <p>25 2008.</p>

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<p>1 Q. And would your answer be the</p> <p>2 same to that question for every year between</p> <p>3 2006 and 2018?</p> <p>4 MR. SOBOL: Objection.</p> <p>5 THE WITNESS: Well, the</p> <p>6 principles that I articulate in the</p> <p>7 question are general, and the</p> <p>8 methodology for opportunity costs and</p> <p>9 how to assess it and what an economist</p> <p>10 needs to know would be the same as --</p> <p>11 across time.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. For any year between 2006 and</p> <p>14 2018, did you conduct any factual inquiry to</p> <p>15 determine what the Summit County ADM Board</p> <p>16 would have spent the money on if it had not</p> <p>17 spent the money on what you quantified as</p> <p>18 opioid-related work?</p> <p>19 MR. SOBOL: Objection. Asked</p> <p>20 and answered.</p> <p>21 THE WITNESS: Okay. In order</p> <p>22 to develop a reliable estimate of</p> <p>23 opportunity costs, which was what I</p> <p>24 was trying to do here, it wasn't</p> <p>25 necessary for me to determine what the</p>	<p>1 have been spent differently.</p> <p>2 And...</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. Okay. So you list a number of</p> <p>5 other affected divisions for Summit County.</p> <p>6 You list the Summit County Prosecutor, Court</p> <p>7 of Common Pleas, Juvenile Court, Sheriff's</p> <p>8 Office, County Jail, Alternative Corrections,</p> <p>9 Adult Probation and Medical Examiner.</p> <p>10 Okay?</p> <p>11 A. That sounds right.</p> <p>12 Q. So for any of those affected</p> <p>13 divisions, for any year between 2006 and</p> <p>14 2018, did you conduct any factual inquiry to</p> <p>15 determine what that division would have spent</p> <p>16 the money on if it had not spent the money on</p> <p>17 what you quantified as opioid-related work?</p> <p>18 MR. SOBOL: Objection in part.</p> <p>19 Asked and answered.</p> <p>20 THE WITNESS: Let me make two</p> <p>21 comments about this in answer to your</p> <p>22 question.</p> <p>23 The first comment is about</p> <p>24 opportunity costs and the nature of</p> <p>25 opportunity costs in economics and how</p>
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<p>1 funds would have been used for in</p> <p>2 detail.</p> <p>3 What's necessary is to know</p> <p>4 they would have been available to the</p> <p>5 board to spend on things they thought</p> <p>6 would be worthwhile.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. For any year between 2006 and</p> <p>9 2018, did you conduct any factual inquiry to</p> <p>10 determine what Summit County Children's</p> <p>11 Services Board would have spent the money on</p> <p>12 if it had not spent that money on what you</p> <p>13 quantified as opioid-related work?</p> <p>14 MR. SOBOL: Objection.</p> <p>15 THE WITNESS: Well, as in the</p> <p>16 case of the previous division we spoke</p> <p>17 about, in order to reliably estimate</p> <p>18 opportunity costs, which was my</p> <p>19 objective here, I did what I needed to</p> <p>20 do to be able to estimate that.</p> <p>21 What was not necessary for me</p> <p>22 to do was to identify a hypothetical</p> <p>23 counterfactual in which the board --</p> <p>24 sorry, we're at Children's Family</p> <p>25 Services now -- in which the funds may</p>	<p>1 an economist studies opportunity</p> <p>2 costs. And a good example is a</p> <p>3 household which incurs, say, an</p> <p>4 unexpected expense of car repair. And</p> <p>5 I'll just pick a number of \$75.</p> <p>6 If the household had not needed</p> <p>7 to spend that money on car repair, the</p> <p>8 money would have been available for</p> <p>9 other things that the household could</p> <p>10 have purchased. And there's a range</p> <p>11 of things that obviously they could do</p> <p>12 with that money.</p> <p>13 What is the opportunity costs</p> <p>14 of the \$75 needed for car repair?</p> <p>15 It's \$75. That's straightforward.</p> <p>16 Not only economic opportunity costs,</p> <p>17 but it's also common sense that that</p> <p>18 would be the opportunity cost of those</p> <p>19 funds.</p> <p>20 So that's what I -- that is the</p> <p>21 economic principle that I applied in</p> <p>22 this case, which was to do what I</p> <p>23 needed to do in order to reliably</p> <p>24 identify the opportunity costs of the</p> <p>25 funds devoted to opioids. That's part</p>

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<p style="text-align: right;">Page 481</p> <p>1 one of my answer.</p> <p>2 Part two of my answer is that I</p> <p>3 did do investigation into the -- into</p> <p>4 the existence of opportunity costs in</p> <p>5 the form of confirming that, yes,</p> <p>6 spending on opioids did divert these</p> <p>7 funds from other uses. And it was</p> <p>8 part of my investigation and part of</p> <p>9 what we talked about last time, that</p> <p>10 that confirmatory research was done.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Okay. I asked a yes or no</p> <p>13 question. You gave me a long answer.</p> <p>14 You said that you "did confirm</p> <p>15 that spending on opioids did divert the funds</p> <p>16 from other uses."</p> <p>17 Okay?</p> <p>18 MR. SOBOL: In part he said</p> <p>19 that, yes.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. So focusing on what you said</p> <p>22 you did about confirming that spending on</p> <p>23 opioids did divert the funds from other uses,</p> <p>24 I want to know for each division what that</p> <p>25 other use was, what those dollars would have</p>	<p style="text-align: right;">Page 483</p> <p>1 I think is the question you're</p> <p>2 asking --</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. Yes.</p> <p>5 A. -- to turn my attention to the</p> <p>6 ADAMHS Board in particular, and asked me to</p> <p>7 identify the particular services that were</p> <p>8 not done because the money was spent on</p> <p>9 opioids, it comes back to the answer I gave a</p> <p>10 minute ago in the previous question, which</p> <p>11 is, in order to identify opportunity costs,</p> <p>12 it's sufficient for an economist to measure</p> <p>13 the spending on, in this case, opioid-related</p> <p>14 activities.</p> <p>15 And as long as -- as long as</p> <p>16 there are alternative uses for the funds,</p> <p>17 that spending on opioid-related activities is</p> <p>18 the reliable, it's the economically</p> <p>19 principled metric for what opportunity costs</p> <p>20 consist of.</p> <p>21 Q. For the Summit County</p> <p>22 Children's Services Board, can you tell me</p> <p>23 what the other use was, what the dollars</p> <p>24 would have been spent on specifically if they</p> <p>25 had not been spent on opioid-related</p>
<p style="text-align: right;">Page 482</p> <p>1 been spent on specifically if they had not</p> <p>2 been spent on opioid-related activities.</p> <p>3 MR. SOBOL: Objection.</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. You tell me what those other</p> <p>6 uses are specifically for the Summit County</p> <p>7 ADM Board.</p> <p>8 MR. SOBOL: Objection. Asked</p> <p>9 and answered.</p> <p>10 THE WITNESS: Let me clarify</p> <p>11 what I just said a minute ago about</p> <p>12 confirming -- and I'll just call it</p> <p>13 diversion for short.</p> <p>14 What I was interested in was</p> <p>15 does diversion take place. And</p> <p>16 there's a series of references in my</p> <p>17 report to some, I think, some news</p> <p>18 articles, to some deposition</p> <p>19 testimony, to some other written</p> <p>20 material, that indicates that, yes,</p> <p>21 there is diversion. When funds are</p> <p>22 devoted to opioids, other things --</p> <p>23 some other things don't get done.</p> <p>24 When you asked me to be -- to</p> <p>25 turn my attention to the ADAMHS Board,</p>	<p style="text-align: right;">Page 484</p> <p>1 activities?</p> <p>2 MR. SOBOL: Objection. Asked</p> <p>3 and answered.</p> <p>4 THE WITNESS: Now, this is the</p> <p>5 same question but for another</p> <p>6 division --</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. Yes.</p> <p>9 A. -- if I understand it?</p> <p>10 Well, then the answer is going</p> <p>11 to be the same.</p> <p>12 With respect to my interest in</p> <p>13 diversion, I wanted to know and had confirmed</p> <p>14 in -- with respect to a series of things that</p> <p>15 I refer to in my report that, yes, diversion</p> <p>16 is real. And what I mean by that is that</p> <p>17 when funds are spent on opioid-related</p> <p>18 activities, some other things are not done.</p> <p>19 And when you come to ask me</p> <p>20 about a particular division, in this case</p> <p>21 Family Services, then what -- what I did in</p> <p>22 this case is to identify the opportunity</p> <p>23 costs of the funds, which is sufficient for</p> <p>24 an economist to be able to provide a dollar</p> <p>25 metric of the opportunity cost of the funds.</p>

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<p>1 And it's not necessary for me to know 2 precisely what those funds would have been 3 spent on as long as there were alternative 4 use of those funds. 5 That's the economically 6 principled way to go about assessing 7 opportunity costs, and that's what I did. 8 Q. So if I asked you the same 9 question for each of the other affected 10 divisions for Summit County, is your answer 11 the same? 12 MR. SOBOL: Objection. 13 THE WITNESS: My answer would 14 generally be the same, yes. 15 QUESTIONS BY MR. KEYES: 16 Q. Well, for the Summit County 17 prosecutor, will you tell me what the other 18 use was, that is, what the dollars would have 19 been spent on specifically if they had not 20 been spent on opioid-related activities? 21 A. Well, let me just remind you of 22 the opportunity costs principle here, which 23 is, for an economist to be able to provide a 24 reliable, theory-based metric of the 25 opportunity cost of spending on a particular</p>	<p>1 costs is to measure the funds devoted 2 to the activity in question, which in 3 this case is opioid-related 4 activities. 5 And so long as there are 6 alternative use of those funds, it's 7 not necessary and it even is just -- 8 it's not done to -- it's not necessary 9 to propose a hypothetical world in 10 which something else would have 11 happened. 12 What is sufficient for me is to 13 know that there would have been other 14 uses for the funds of the division, 15 and by devoting them to opioids there 16 was less money available for other 17 things. 18 QUESTIONS BY MR. KEYES: 19 Q. For any year between 2006 and 20 2018, for any of the Cuyahoga County-affected 21 divisions that you've identified, did you 22 conduct any factual inquiry to identify the 23 other use such that you can tell me what the 24 dollars would have been spent on specifically 25 if they had not been spent on opioid-related</p>
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<p>1 activity, it's not necessary for me to know 2 what particular -- what precise services that 3 those funds would have been devoted to in an 4 alternative world in which the opioid crisis 5 were not here. 6 It's sufficient for me to know 7 that this is what they spent on 8 opioid-related activities, and those funds 9 would have been available for something else. 10 Q. Did you conduct a factual 11 inquiry for any of the Summit County affected 12 divisions to identify the other use, such 13 that you can tell me what the dollars would 14 have been spent on specifically if they had 15 not been spent on opioid-related activities? 16 MR. SOBOL: Objection. Asked 17 and answered. 18 THE WITNESS: Yeah, for each of 19 the Summit County divisions that 20 you're referring to, my objective was 21 to identify the opportunity cost of 22 funds devoted to opioid-related 23 activity. 24 And the economically principled 25 standard way of assessing opportunity</p>	<p>1 activities? 2 MR. SOBOL: Objection. Asked 3 and answered. 4 THE WITNESS: The answer for 5 Cuyahoga County would be similar to 6 the answer for Summit County. 7 What I was doing as an 8 economist in this case is to estimate 9 in dollar terms a measure of the 10 opportunity cost of the funds that 11 were devoted to opioid-related 12 activities and applying standard 13 methodology in economics to measure 14 opportunity costs. 15 It's not necessary for an 16 economist to identify specifically the 17 alternative uses of the funds in a 18 hypothetical world in which they had 19 not been spent on opioids. It's -- 20 opioid-related activities. 21 It's sufficient for me to say 22 this -- these were the funds devoted 23 to opioid-related activities. They 24 would be available for other uses. 25</p>

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<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. In 2006, did the Summit County</p> <p>3 ADM Board create and fund any new position</p> <p>4 because of the opioid problem?</p> <p>5 A. I'm not sure.</p> <p>6 Q. How about in 2007?</p> <p>7 A. I'm not sure.</p> <p>8 Q. How about any year between 2008</p> <p>9 and 2018?</p> <p>10 A. I'm not sure.</p> <p>11 Q. Did you look into that at all,</p> <p>12 to see whether in any year the Summit County</p> <p>13 ADM Board created and funded any new position</p> <p>14 because of the opioid problem?</p> <p>15 A. I may have. You know, I was</p> <p>16 interested in material like this, but I don't</p> <p>17 remember the details of the Summit ADM Board.</p> <p>18 Q. Where did you look to answer</p> <p>19 that question when you were interested in</p> <p>20 that question?</p> <p>21 A. In various county documents for</p> <p>22 both counties.</p> <p>23 Q. And what did you learn?</p> <p>24 MR. SOBOL: Objection.</p> <p>25 THE WITNESS: Well, it's --</p>	<p>1 interested in these sort of documents.</p> <p>2 Q. Why, if it's not necessary to</p> <p>3 your inquiry?</p> <p>4 A. Well, it just seemed prudent</p> <p>5 to, you know, be aware of what's going on in</p> <p>6 the affected divisions.</p> <p>7 Q. Did you take any notes as you</p> <p>8 did this factual inquiry to sort of keep</p> <p>9 track of what you learned?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 THE WITNESS: I don't think so,</p> <p>12 no.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. Do you talk about it at all in</p> <p>15 your report?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 THE WITNESS: Talk about what?</p> <p>18 QUESTIONS BY MR. KEYES:</p> <p>19 Q. About whether the Summit County</p> <p>20 Children's Services Board created or funded</p> <p>21 any new position because of the opioid</p> <p>22 problem in any year between 2006 and 2018?</p> <p>23 A. Well, my report contains a lot</p> <p>24 of details on staffing at all the affected</p> <p>25 divisions.</p>
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<p>1 there was particular cases, you know.</p> <p>2 You'd just find some particular</p> <p>3 documents, and that --</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. So can you identify for me any</p> <p>6 year between 2006 and 2018 when the Summit</p> <p>7 County ADM Board created and funded a new</p> <p>8 position because of the opioid problem?</p> <p>9 A. I don't remember.</p> <p>10 Q. Can you identify for me, for</p> <p>11 any year between 2006 and 2018, when the</p> <p>12 Summit County Children's Services Board</p> <p>13 created and funded a new position because of</p> <p>14 the opioid problem?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 THE WITNESS: Okay. Before I</p> <p>17 answer your question, I want to</p> <p>18 clarify, it's not necessary for this</p> <p>19 to take place in order for there to</p> <p>20 have been opportunity costs. And I</p> <p>21 don't remember whether I saw anything</p> <p>22 about a creation of a position.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. Did you look into it?</p> <p>25 A. Well, I would have been</p>	<p>1 Q. Do you talk about that at all</p> <p>2 in your report?</p> <p>3 MR. SOBOL: Objection.</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. In the narrative report, you</p> <p>6 have this --</p> <p>7 A. Narrative report.</p> <p>8 Q. -- you have this long report.</p> <p>9 Do you talk about it at all in</p> <p>10 your report?</p> <p>11 MR. SOBOL: Objection. Asked</p> <p>12 and answered.</p> <p>13 THE WITNESS: Yeah, this is --</p> <p>14 I'm getting a little lost again.</p> <p>15 This is ADM? ADM in a</p> <p>16 particular county?</p> <p>17 QUESTIONS BY MR. KEYES:</p> <p>18 Q. This is the Summit County</p> <p>19 Children's Services Board.</p> <p>20 A. Summit County Children's</p> <p>21 Services.</p> <p>22 Q. We already covered Summit</p> <p>23 County ADM Board --</p> <p>24 A. Okay. Sorry.</p> <p>25 Q. -- where you said, "I think I</p>

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<p style="text-align: right;">Page 493</p> <p>1 learned something, but I don't remember what 2 it is." 3 MR. SOBOL: Objection. 4 Mischaracterizes the answer. 5 QUESTIONS BY MR. KEYES: 6 Q. Same question for Summit County 7 Children's Service Board. 8 MR. SOBOL: What's the 9 question? 10 QUESTIONS BY MR. KEYES: 11 Q. You said it's not necessary -- 12 I want to be clear. You said it's not 13 necessary, but you still were interested 14 because you thought it was prudent. 15 And I asked what you remember 16 learning, and you said, I don't know. 17 And I said, do you talk about 18 the concept in the narrative report about 19 whether the Summit County Children's Services 20 Board created and funded any new position 21 because of the opioid problem? 22 MR. SOBOL: We don't even need 23 a stenographer, do we? 24 Do you have a question? 25 MR. KEYES: I think the</p>	<p style="text-align: right;">Page 495</p> <p>1 County Court of Common Pleas created or 2 funded a new position because of the opioid 3 problem? 4 MR. SOBOL: Objection. 5 THE WITNESS: Again, this is 6 not necessary for an opportunity cost 7 investigation. 8 But in answer to your question, 9 I don't recall. 10 QUESTIONS BY MR. KEYES: 11 Q. Can you identify for me any 12 year between 2006 and 2018 when the Summit 13 County Juvenile Court created or funded a new 14 position because of the opioid problem? 15 MR. SOBOL: Objection. 16 THE WITNESS: I don't recall. 17 QUESTIONS BY MR. KEYES: 18 Q. Can you identify for me any 19 year between 2006 and 2018 when the Summit 20 County Sheriff's Office created and funded a 21 new position because of the opioid problem? 22 MR. SOBOL: Objection. 23 THE WITNESS: Again, it's not 24 necessary for an opportunity cost 25 analysis, but I don't recall the</p>
<p style="text-align: right;">Page 494</p> <p>1 stenographer is great. 2 THE WITNESS: I -- 3 MR. SOBOL: There's no question 4 before you. 5 He just gave two sentences 6 about what it is that he recalls the 7 testimony being. 8 QUESTIONS BY MR. KEYES: 9 Q. Do you talk in the narrative 10 section of your report about whether the 11 Summit County Children's Services Board 12 created or funded any new position because of 13 the opioid problem? 14 A. I don't think that section in 15 my report discusses a new position. 16 Q. Can you identify for me any 17 year between 2006 and 2018 when the Summit 18 County Prosecutor created or funded a new 19 position because of the opioid problem? 20 MR. SOBOL: Objection. 21 THE WITNESS: Not as I sit here 22 today, as people say. 23 QUESTIONS BY MR. KEYES: 24 Q. Can you identify for me any 25 year between 2006 and 2018 when the Summit</p>	<p style="text-align: right;">Page 496</p> <p>1 specifics of your question. 2 QUESTIONS BY MR. KEYES: 3 Q. Can you identify for me any 4 year between 2006 and 2018 when the Summit 5 County Jail created and funded a new position 6 because of the opioid problem? 7 MR. SOBOL: Objection. 8 THE WITNESS: It's the same 9 answer: It's not necessary for 10 opportunity costs, and I don't 11 remember anything about a new 12 position. 13 QUESTIONS BY MR. KEYES: 14 Q. Can you identify for me any 15 year between 2006 and 2018 when Summit County 16 Alternative Corrections created and funded a 17 new position because of the opioid problem? 18 MR. SOBOL: Objection. 19 THE WITNESS: It would be the 20 same answer: It's not necessary for 21 opportunity costs, and I don't recall 22 about a new position. 23 QUESTIONS BY MR. KEYES: 24 Q. Can you identify for me any 25 year between 2006 and 2018 when Summit County</p>

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<p>1 Adult Probation created and funded a new 2 position because of the opioid problem? 3 MR. SOBOL: Objection. 4 THE WITNESS: It would be the 5 same answer: It's not necessary for 6 opportunity costs, and I don't recall 7 the specifics of a new position. 8 QUESTIONS BY MR. KEYES: 9 Q. Can you identify for me any 10 year between 2006 and 2018 when Summit County 11 Medical Examiner created and funded a new 12 position because of the opioid problem? 13 MR. SOBOL: Objection. 14 THE WITNESS: It would be the 15 same answer: It's not necessary for 16 opportunity costs, and I don't recall 17 the specifics of Medical Examiner. 18 QUESTIONS BY MR. KEYES: 19 Q. Turning then to Cuyahoga 20 County. For any of the divisions that you 21 identified as an affected division, did any 22 of them, in any year between 2006 and 2018, 23 create and fund a new position because of the 24 opioid problem? 25 MR. SOBOL: Objection.</p>	<p>1 ADM Board reassign any personnel from one 2 department to another? 3 MR. SOBOL: Objection. 4 QUESTIONS BY MR. KEYES: 5 Q. Because of the opioid problem? 6 MR. SOBOL: Objection. 7 THE WITNESS: Well, this, 8 again, isn't necessary for opportunity 9 cost, and I -- in answer to your 10 question about the assignment, I'm not 11 sure. 12 QUESTIONS BY MR. KEYES: 13 Q. Okay. In 2007, did the Summit 14 County ADM Board reassign any personnel from 15 one department to another? 16 MR. SOBOL: Objection. 17 THE WITNESS: This would be the 18 same answer as to the previous 19 question: It's not necessary for 20 opportunity costs, and I'm not sure 21 about the reassignment. 22 QUESTIONS BY MR. KEYES: 23 Q. In any year between 2008 and 24 2018, did the Summit County ADM Board 25 reassign any personnel from one department to</p>
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<p>1 THE WITNESS: This would be the 2 same answer I gave for the divisions 3 at Summit: It's not necessary to 4 determine opportunity costs to have a 5 division hired new personnel. 6 And then with respect to the 7 specifics about each division and each 8 year, I don't recall. 9 QUESTIONS BY MR. KEYES: 10 Q. Did the Summit County ADM Board 11 in 2006 shift any personnel from one 12 department to another or from one activity to 13 another because of the opioid problem? 14 MR. SOBOL: Objection. 15 "Shift." 16 THE WITNESS: Well, the funding 17 for staff means they would have 18 devoted their time to opioid-related 19 activities. That's what opportunity 20 cost tells you. 21 Beyond that, I'm not sure how 22 to interpret the nature of your 23 question. 24 QUESTIONS BY MR. KEYES: 25 Q. In 2006, did the Summit County</p>	<p>1 another because of the opioid problem? 2 A. This would be the same answer: 3 It's not necessary from the standpoint of 4 opportunity costs, and I'm not sure about 5 reassignment. 6 Q. Can you tell me for any year 7 between 2006 and 2018 whether Summit County 8 Children's Services Board reassigned any 9 personnel from one department to another 10 because of the opioid problem? 11 MR. SOBOL: Objection. 12 THE WITNESS: This would be the 13 same answer as to the ADAMHS Board: 14 It's not necessary for me to know that 15 in order to estimate opportunity 16 costs. 17 And with respect to your 18 question about reassignment, I'm not 19 sure. 20 QUESTIONS BY MR. KEYES: 21 Q. For any year between 2006 and 22 2018, did any of the Summit County affected 23 divisions reassign any personnel from one 24 department to another because of the opioid 25 problem?</p>

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<p>1 MR. SOBOL: Objection.</p> <p>2 THE WITNESS: Again, to</p> <p>3 estimate opportunity costs, I'm able</p> <p>4 to do that with the numbers that I</p> <p>5 have.</p> <p>6 And with respect to your</p> <p>7 question about specific reassignments,</p> <p>8 I'm not sure.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. In 2000 -- for any year between</p> <p>11 2006 and 2018, did any of the Cuyahoga County</p> <p>12 affected divisions reassign any personnel</p> <p>13 from one department to another because of the</p> <p>14 opioid problem?</p> <p>15 A. This would be the same -- the</p> <p>16 nature of the answer would be the same as for</p> <p>17 Summit: For me to do this work in this</p> <p>18 matter, to be able to quantify opportunity</p> <p>19 costs, I had what I needed to know.</p> <p>20 And with respect to your</p> <p>21 specific question, I'm not sure about</p> <p>22 reassignment.</p> <p>23 Q. In 2006, did the Summit County</p> <p>24 ADM Board change the job responsibilities for</p> <p>25 any employee because of the opioid problem?</p>	<p>1 MR. KEYES: Can I ask a few</p> <p>2 questions just to finish this?</p> <p>3 MR. SOBOL: He asked for a</p> <p>4 break. Let him have a break.</p> <p>5 It's up to you.</p> <p>6 THE WITNESS: Go ahead.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. Okay. For any year between</p> <p>9 2006 and 2018, did the Summit County ADM</p> <p>10 Board change the job responsibilities for any</p> <p>11 employee because of the opioid problem?</p> <p>12 MR. SOBOL: Objection. "Job</p> <p>13 responsibilities."</p> <p>14 THE WITNESS: This answer will</p> <p>15 be similar to a series of answers I've</p> <p>16 given the last few minutes: In order</p> <p>17 to estimate opportunity costs, I had</p> <p>18 the information I needed in order to</p> <p>19 estimate that in dollar terms.</p> <p>20 And with respect to your</p> <p>21 question about job responsibilities,</p> <p>22 it wasn't necessary for me to know if</p> <p>23 there were job responsibilities</p> <p>24 altered because of the opioid crisis.</p> <p>25</p>
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<p>1 MR. SOBOL: Objection to the</p> <p>2 form.</p> <p>3 THE WITNESS: Well, this is a</p> <p>4 version of the question you just</p> <p>5 asked.</p> <p>6 I wonder if after I answer this</p> <p>7 question, if we could take a break for</p> <p>8 a bit.</p> <p>9 MR. SOBOL: Whatever.</p> <p>10 THE WITNESS: So in order to</p> <p>11 estimate opportunity costs, it's not</p> <p>12 necessary for me to know whether job</p> <p>13 responsibility was changed. I think</p> <p>14 that was the question. I'm still able</p> <p>15 to do that with the information that I</p> <p>16 have.</p> <p>17 And I'm not sure about in a</p> <p>18 particular year whether they changed</p> <p>19 job assignments.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. Okay. Let me just finish this</p> <p>22 line of questioning.</p> <p>23 In any --</p> <p>24 MR. SOBOL: Do you want to take</p> <p>25 a break?</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Okay. Last question and then</p> <p>3 we can take a break.</p> <p>4 For any year between 2006 and</p> <p>5 2018, did any of the Summit County affected</p> <p>6 divisions or any of the Cuyahoga County</p> <p>7 affected divisions change the job</p> <p>8 responsibilities for any employee because of</p> <p>9 the opioid problem?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 THE WITNESS: Okay. As an</p> <p>12 economist, in order to fulfill my</p> <p>13 assignment in this case, which is to</p> <p>14 estimate the opportunity cost of these</p> <p>15 budget funds, I was able to do that</p> <p>16 based on the information that I had in</p> <p>17 a reliable and professionally</p> <p>18 acceptable way.</p> <p>19 With respect to your question</p> <p>20 about whether job responsibilities</p> <p>21 were changed in either county over a</p> <p>22 11-year period in a total of maybe 19</p> <p>23 affected divisions, I have to answer</p> <p>24 that I'm not sure.</p> <p>25 VIDEOGRAPHER: The time is</p>

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<p>1 10:07 a.m., and we're off the record. 2 (Off the record at 10:07 a.m.) 3 VIDEOGRAPHER: The time is 4 10:30 a.m., and we're on the record. 5 QUESTIONS BY MR. KEYES: 6 Q. Professor McGuire, in 2006, did 7 the Summit County ADM Board reallocate any 8 money from one nonopioid-related program or 9 account in order to address an opioid-related 10 need? 11 A. Nonopioid-related account? 12 I'm not sure if they moved 13 money between accounts. I'm not sure. 14 Q. In 2007, did the Summit County 15 ADM Board reallocate any money from one 16 nonopioid-related program or account in order 17 to address an opioid-related need? 18 MR. SOBOL: Objection. 19 THE WITNESS: Again, this isn't 20 necessary for me to be able to 21 identify opportunity cost. 22 In answer to your question, I'm 23 not sure what programs and accounts 24 may have been subject to some 25 reallocation.</p>	<p>1 to estimate opportunity costs, it's 2 not necessary for me to be able to 3 identify specific reallocations 4 between or across programs and 5 accounts. 6 And in answer to your question, 7 I'm not sure if there were a program 8 and/or account-related allocations. 9 QUESTIONS BY MR. KEYES: 10 Q. For any year between 2006 and 11 2018, did any of the Cuyahoga County affected 12 divisions reallocate any money from one 13 nonopioid-related program or account in order 14 to address an opioid-related need? 15 MR. SOBOL: Objection. In 16 part, asked and answered. 17 THE WITNESS: Again, this is 18 not something I need to know in order 19 to fulfill my assignment here, to 20 estimate opportunity costs. 21 And with respect to your 22 question, I'm not sure about the -- 23 your division reallocation across 24 programs and accounts. 25</p>
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<p>1 QUESTIONS BY MR. KEYES: 2 Q. For any year between 2006 and 3 2018, did the Summit County ADM Board 4 reallocate any money from one 5 nonopioid-related program or account in order 6 to address an opioid-related need? 7 MR. SOBOL: Objection. 8 THE WITNESS: Okay. This would 9 be a similar answer to I gave a minute 10 ago: In order to assess opportunity 11 costs, it's not necessary for me to 12 know the kind of program and account. 13 And with respect to your 14 question about program and accounts, 15 I'm not sure if there was reallocation 16 across or within programs and 17 accounts. 18 QUESTIONS BY MR. KEYES: 19 Q. For any year between 2006 and 20 2018, did any of the Summit County affected 21 divisions reallocate any money from one 22 nonopioid-related program or account in order 23 to address an opioid-related need? 24 MR. SOBOL: Objection. 25 THE WITNESS: Okay. In order</p>	<p>1 QUESTIONS BY MR. KEYES: 2 Q. You said you didn't need to 3 know. 4 For any year between 2006 and 5 2018, did you attempt to identify whether any 6 of the Summit County affected divisions 7 reallocated any money from one 8 nonopioid-related program or account to 9 address an opioid-related need? 10 A. Okay. What I did for all these 11 years, for all these divisions, is to measure 12 with methods that we've discussed at some 13 point today and yesterday {sic} the funds 14 that each division in each year devoted to 15 opioid-related activities. And the economic 16 principle of opportunity cost means that 17 that's what I need to know: how much of 18 these funds that had alternative uses were 19 spent on opioid-related activities. 20 Q. My question was: For any year 21 between 2006 and 2018, did you attempt to 22 identify whether any of the Summit County 23 affected divisions reallocated any money from 24 a nonopioid-related program or account to 25 address an opioid-related need?</p>

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<p>1 MR. SOBOL: Objection. Asked</p> <p>2 and answered.</p> <p>3 THE WITNESS: My task was to</p> <p>4 estimate opportunity costs, which is</p> <p>5 what I focused on. And the estimate</p> <p>6 of opportunity cost is based on a</p> <p>7 measure of the funds devoted to the</p> <p>8 opioid-related activity.</p> <p>9 It's sufficient for me as an</p> <p>10 economist to be able to determine</p> <p>11 opportunity cost, to measure those</p> <p>12 funds and to be aware that there are</p> <p>13 other uses for those funds.</p> <p>14 In that context, the numbers I</p> <p>15 came up with are the right ones.</p> <p>16 QUESTIONS BY MR. KEYES:</p> <p>17 Q. What steps did you take to be</p> <p>18 aware that there are other uses for the funds</p> <p>19 that you've said were the opioid-related</p> <p>20 expenditures?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 THE WITNESS: Well, to some</p> <p>23 degree these -- this is based on</p> <p>24 experience. It would be a rare</p> <p>25 household, it would be a rare</p>	<p>1 MR. SOBOL: Objection.</p> <p>2 THE WITNESS: No, that's not a</p> <p>3 truism, but it's accurate in lots of</p> <p>4 contexts.</p> <p>5 QUESTIONS BY MR. KEYES:</p> <p>6 Q. And it's an assumption here on</p> <p>7 your part?</p> <p>8 MR. SOBOL: Objection. Asked</p> <p>9 and answered.</p> <p>10 THE WITNESS: No.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Okay. So tell me the specific</p> <p>13 steps you took to identify concrete things</p> <p>14 that any of these divisions would have spent</p> <p>15 the money on if they did not spend the money</p> <p>16 on opioid-related activities.</p> <p>17 MR. SOBOL: Objection. Asked</p> <p>18 and answered.</p> <p>19 THE WITNESS: I think this is a</p> <p>20 version of a similar question I've</p> <p>21 been asked a few times this morning.</p> <p>22 And what was necessary for me to do</p> <p>23 was to identify the funds devoted to</p> <p>24 opioid-related activities, which are a</p> <p>25 metric of the opportunity cost of</p>
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<p>1 department, it would be a rare</p> <p>2 anything, really, that if an</p> <p>3 unexpected cost is imposed on the</p> <p>4 decision-maker that there's nothing</p> <p>5 else they could do with those funds.</p> <p>6 That doesn't make a lot of sense to</p> <p>7 me, just as a microeconomist.</p> <p>8 And here, as we've discussed, I</p> <p>9 was interested in confirming that by</p> <p>10 information related to diversion. And</p> <p>11 in speaking with and looking for</p> <p>12 written material and for reading</p> <p>13 depositions, there's evidence that</p> <p>14 diversion did take place. Specific</p> <p>15 examples of if the police are doing</p> <p>16 this, then they couldn't be doing</p> <p>17 that.</p> <p>18 So I find it to be, you know, a</p> <p>19 conclusion that I hold very firmly</p> <p>20 that, yes, if you're spending money on</p> <p>21 one thing, you can't spend it on</p> <p>22 something else.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. You believe that to be a</p> <p>25 truism?</p>	<p>1 those funds so long as there are</p> <p>2 alternative uses for those funds.</p> <p>3 You know, as in the case of a</p> <p>4 household in which, say, \$75 is spent</p> <p>5 on an unexpected car repair, that \$75</p> <p>6 is a good measure of the opportunity</p> <p>7 cost of those funds. And I can say</p> <p>8 that with confidence, and I can say</p> <p>9 that based on sound and well-accepted</p> <p>10 principles of economics without</p> <p>11 needing to know whether that \$75 would</p> <p>12 have spent on dog food or whether it</p> <p>13 would have been, you know, I don't</p> <p>14 know, spent on anything else.</p> <p>15 So for me to do my job, it was</p> <p>16 sufficient for me to measure the funds</p> <p>17 devoted to the opioid-related</p> <p>18 activity.</p> <p>19 QUESTIONS BY MR. KEYES:</p> <p>20 Q. I take it you like the \$75</p> <p>21 example. You've used it a number of times as</p> <p>22 a hypothetical.</p> <p>23 And if I understand your</p> <p>24 hypothetical, someone has a damaged car and</p> <p>25 it's going to cost \$75 to repair it?</p>

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<p style="text-align: right;">Page 513</p> <p>1 A. That's the basis of my example,</p> <p>2 yes.</p> <p>3 Q. Okay. So I take it that in</p> <p>4 your hypothetical someone has gone to a shop</p> <p>5 and they've gotten an estimate that says it's</p> <p>6 going to cost \$75.</p> <p>7 MR. SOBOL: Objection.</p> <p>8 Is there a question?</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. Is that correct?</p> <p>11 A. Well, not exactly. It was more</p> <p>12 what I -- I think what I said in my example</p> <p>13 is that they had to pay \$75 to repair the</p> <p>14 car.</p> <p>15 Q. Okay. Well, let me refine this</p> <p>16 hypothetical.</p> <p>17 I have a car and it's damaged.</p> <p>18 I take it to a shop, and I get a \$75</p> <p>19 estimate. \$75 to repair the damage.</p> <p>20 Okay?</p> <p>21 A. Okay.</p> <p>22 Q. I have a friend who works at</p> <p>23 another shop, and he says he can do the work</p> <p>24 for a hundred dollars to repair the same</p> <p>25 damage.</p>	<p style="text-align: right;">Page 515</p> <p>1 funds is a question about what else could</p> <p>2 have been done with the money with respect to</p> <p>3 other things your household could have</p> <p>4 purchased. And the answer to that is, you</p> <p>5 would have had a hundred dollars had you not</p> <p>6 purchased the car repair from the friend. So</p> <p>7 \$100.</p> <p>8 Q. So in my hypothetical, my</p> <p>9 opportunity cost is a hundred dollars?</p> <p>10 A. In your hypothetical, when</p> <p>11 you've decided that you want to go to your</p> <p>12 friend for the transaction and you spend a</p> <p>13 hundred dollars on that, the opportunity cost</p> <p>14 of that hundred dollars is a hundred dollars</p> <p>15 less of other stuff you could buy.</p> <p>16 Q. Let me change the hypothetical.</p> <p>17 I still have gone to the shop down the</p> <p>18 street. They've still given me a \$75 repair</p> <p>19 estimate for that damage.</p> <p>20 My girlfriend works at another</p> <p>21 shop and --</p> <p>22 A. Does your wife know?</p> <p>23 Q. -- and she says that her shop</p> <p>24 can fix it for 200 bucks.</p> <p>25 A. Okay.</p>
<p style="text-align: right;">Page 514</p> <p>1 Okay?</p> <p>2 A. Okay.</p> <p>3 Q. And I decide I'm going to have</p> <p>4 my friend's shop do the repair work because</p> <p>5 it gets repaired, and I want my friend's shop</p> <p>6 to get the business.</p> <p>7 Okay?</p> <p>8 A. Okay.</p> <p>9 Q. So I spend a hundred dollars to</p> <p>10 get the car repaired.</p> <p>11 A. Yes.</p> <p>12 Q. Is my opportunity cost \$75 or a</p> <p>13 hundred dollars in that example?</p> <p>14 A. Well, for an economist, the --</p> <p>15 what you purchase with your funds that have</p> <p>16 to do with car repair, in this case, are a</p> <p>17 little more complicated because it's not</p> <p>18 simply one thing, which is to get your car</p> <p>19 repaired, but you're also getting value from</p> <p>20 the transaction with your friend. And</p> <p>21 that's -- you know, for whatever reason, you</p> <p>22 find that to be worthwhile doing. And you</p> <p>23 make the decision to pay a hundred dollars to</p> <p>24 get your car fixed.</p> <p>25 The opportunity cost of those</p>	<p style="text-align: right;">Page 516</p> <p>1 Q. And because I have a crush on</p> <p>2 her, I decide I'm going to take my car to</p> <p>3 that shop, and I'm going to spend \$200 for</p> <p>4 that shop to repair it.</p> <p>5 A. Okay.</p> <p>6 Q. In that hypothetical, my</p> <p>7 opportunity cost is \$75 or \$200?</p> <p>8 A. Okay. This hypothetical, to an</p> <p>9 economist, isn't very different than your</p> <p>10 first hypothetical.</p> <p>11 You had a friend whose business</p> <p>12 you -- giving him the business was worth kind</p> <p>13 of -- I think the implication of your</p> <p>14 hypothetical, it was worth \$25 to you to be</p> <p>15 able to give the \$100 to your friend and to</p> <p>16 repair your car.</p> <p>17 You have another friend who you</p> <p>18 value more highly. You're even happier about</p> <p>19 giving her shop the business, and you spend</p> <p>20 \$200 to get your car repaired. But you're</p> <p>21 kind of buying -- you would call it in</p> <p>22 economics a joint product. You're buying a</p> <p>23 car repair plus you're buying something else,</p> <p>24 which is the regard with which your friend</p> <p>25 holds you, or however you want to phrase</p>

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<p>1 that, and you spend \$200 for that.</p> <p>2 Then the opportunity cost</p> <p>3 question is: How much fewer of other</p> <p>4 household items would you be in position to</p> <p>5 buy after you decided to spend \$200 for your</p> <p>6 car repair? And it's \$200 less.</p> <p>7 So the answer with respect to</p> <p>8 the opportunity cost of that \$200 is \$200.</p> <p>9 Q. And so the cost consequence of</p> <p>10 my decision is \$200, because that's what I</p> <p>11 elected to spend, correct?</p> <p>12 A. Well, if I could phrase it in</p> <p>13 my terms, the opportunity cost of those \$200</p> <p>14 is \$200.</p> <p>15 Q. And to you, it doesn't matter</p> <p>16 whether I would spend that \$200 on something</p> <p>17 else. The fact that I have spent \$200 means</p> <p>18 the opportunity cost is \$200, correct?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 THE WITNESS: I'm not sure I'm</p> <p>21 following what you're trying to get at</p> <p>22 here. Sorry.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. Well, I think you said before</p> <p>25 it doesn't matter how I would have spent that</p>	<p>1 2018, did you attempt to identify whether any</p> <p>2 of the Cuyahoga County affected divisions</p> <p>3 reallocated any money from a</p> <p>4 nonopioid-related program or account to</p> <p>5 address an opioid-related need?</p> <p>6 MR. SOBOL: Objection. Asked</p> <p>7 and answered.</p> <p>8 THE WITNESS: In order to</p> <p>9 identify opportunity cost, which is</p> <p>10 what I needed to do for my report, it</p> <p>11 was sufficient for me to get good</p> <p>12 measures of the funds devoted to</p> <p>13 opioid-related activities. It wasn't</p> <p>14 necessary to be able to, you know,</p> <p>15 describe the ins and outs of that.</p> <p>16 And so with respect to your</p> <p>17 question of reallocation on accounts</p> <p>18 or programs -- I forget how you</p> <p>19 phrased it -- I'm not sure.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. My question was: Did you</p> <p>22 attempt to do that identification?</p> <p>23 You said you didn't need to.</p> <p>24 My question is not whether you</p> <p>25 needed to. My question was did you.</p>
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<p>1 \$200 on something else instead of taking this</p> <p>2 damaged car to my girlfriend's shop. To you</p> <p>3 the mere fact that I spent \$200 means the</p> <p>4 opportunity cost is \$200, regardless of how I</p> <p>5 could have spent the money elsewhere.</p> <p>6 MR. SOBOL: Objection.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. Is that correct?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 THE WITNESS: Well, I think the</p> <p>11 way to say that in conventional</p> <p>12 economics terms is that it's not</p> <p>13 necessary for me, as an evaluator of</p> <p>14 this opportunity cost, to know</p> <p>15 precisely what you would have done</p> <p>16 with the \$200. You might have saved</p> <p>17 some. You might have taken your wife</p> <p>18 out to dinner.</p> <p>19 In any case, the opportunity</p> <p>20 cost of whatever that is would be</p> <p>21 \$200. It's very mainstream,</p> <p>22 down-the-middle-of-the-plate</p> <p>23 economics.</p> <p>24 QUESTIONS BY MR. KEYES:</p> <p>25 Q. For any year between 2006 and</p>	<p>1 Did you attempt -- for any year</p> <p>2 between 2006 and 2018 attempt to identify</p> <p>3 whether any of the Cuyahoga County affected</p> <p>4 divisions reallocated any money from a</p> <p>5 nonopioid-related program or account to</p> <p>6 address an opioid-related need?</p> <p>7 MR. SOBOL: Objection. Asked</p> <p>8 and answered.</p> <p>9 THE WITNESS: Yeah. So that</p> <p>10 whoever is watching this or reading it</p> <p>11 understands where I'm coming from on</p> <p>12 this, I need to explain why I didn't</p> <p>13 need to do that.</p> <p>14 And the reason is that my job,</p> <p>15 as I understood it, was to estimate</p> <p>16 the opportunity cost of funds devoted</p> <p>17 to the opioid-related activities. And</p> <p>18 that's what I did. And that told me</p> <p>19 what I needed to know to be able to</p> <p>20 get a good measure of the cost to the</p> <p>21 bellwether counties here.</p> <p>22 And it wasn't necessary for me</p> <p>23 to determine what the alternative</p> <p>24 spending would have been in the</p> <p>25 affected divisions in either county</p>

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<p style="text-align: right;">Page 521</p> <p>1 over the years.</p> <p>2 QUESTIONS BY MR. KEYES:</p> <p>3 Q. You have opined to a reasonable</p> <p>4 degree of economic certainty that opportunity</p> <p>5 costs exist for each of the affected</p> <p>6 divisions, correct?</p> <p>7 MR. SOBOL: Objection. You may</p> <p>8 answer.</p> <p>9 THE WITNESS: I'll say okay.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. And you have placed the value</p> <p>12 on those opportunity costs as the dollars</p> <p>13 that you quantified as being spent on</p> <p>14 opioid-related activities, correct?</p> <p>15 A. That was my measure of</p> <p>16 opportunity costs, yes, the dollars spent on</p> <p>17 opioid-related activities.</p> <p>18 Q. Okay. For any --</p> <p>19 A. Pardon me, just -- I'm sorry,</p> <p>20 just one qualification of that.</p> <p>21 Of the potentially affected</p> <p>22 costs.</p> <p>23 Q. For any of the Summit County</p> <p>24 affected divisions, tell me one concrete way</p> <p>25 the money would have been spent by that</p>	<p style="text-align: right;">Page 523</p> <p>1 activities of the division.</p> <p>2 QUESTIONS BY MR. KEYES:</p> <p>3 Q. Can you be any more specific</p> <p>4 than that?</p> <p>5 MR. SOBOL: Objection. Asked</p> <p>6 and answered.</p> <p>7 THE WITNESS: Well, in order to</p> <p>8 estimate opportunity cost, which is my</p> <p>9 assignment here, it's not necessary</p> <p>10 for me to identify exactly what other</p> <p>11 program or account would have been --</p> <p>12 would have had access to the funds</p> <p>13 that were devoted to opioid-related</p> <p>14 activities. It's completely</p> <p>15 sufficient for me to know the</p> <p>16 opioid-related activity funds.</p> <p>17 QUESTIONS BY MR. KEYES:</p> <p>18 Q. So for any of the Summit County</p> <p>19 affected divisions, can you give me a single</p> <p>20 example of what the dollars would have been</p> <p>21 spent on if they had not been spent on what</p> <p>22 you identified as the opioid-related</p> <p>23 expenditures?</p> <p>24 MR. SOBOL: Objection. Asked</p> <p>25 and answered.</p>
<p style="text-align: right;">Page 522</p> <p>1 division if those dollars were not spent on</p> <p>2 opioid-related activities.</p> <p>3 MR. SOBOL: Objection. Asked</p> <p>4 and answered.</p> <p>5 THE WITNESS: I'm sorry, do you</p> <p>6 mean would or could in that question?</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. Would.</p> <p>9 A. Would.</p> <p>10 Q. Would.</p> <p>11 For any of the Summit County</p> <p>12 affected divisions, tell me one concrete way</p> <p>13 the money would have been spent by that</p> <p>14 division if those dollars were not spent on</p> <p>15 opioid-related activities.</p> <p>16 A. Okay.</p> <p>17 MR. SOBOL: Objection. Asked</p> <p>18 and answered.</p> <p>19 THE WITNESS: The application</p> <p>20 of the principle of opportunity costs</p> <p>21 in this context provides an answer to</p> <p>22 that in the form that had the money</p> <p>23 not been devoted to opioid-related</p> <p>24 activities, it would have been</p> <p>25 distributed across some other of the</p>	<p style="text-align: right;">Page 524</p> <p>1 THE WITNESS: Well, this is</p> <p>2 the -- exactly the same question for a</p> <p>3 different county. And my answer, to</p> <p>4 the best of my ability, will be the</p> <p>5 same, which is, for me to do my</p> <p>6 assignment, what -- you know, and what</p> <p>7 that involved is application of the</p> <p>8 principle of opportunity cost, then</p> <p>9 it's completely sufficient for me to</p> <p>10 identify the funds that are devoted to</p> <p>11 opioid-related activities, and it's</p> <p>12 not necessary for me to identify the</p> <p>13 particular program or account or</p> <p>14 activity that any of these divisions</p> <p>15 would have spent those funds on in the</p> <p>16 alternative.</p> <p>17 It's sufficient for me to know</p> <p>18 they could have spent those on the</p> <p>19 alternative, and they have, you know,</p> <p>20 a value in alternative use, which is</p> <p>21 the idea of opportunity cost.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Did you talk to a single person</p> <p>24 who works for any of the Summit County</p> <p>25 affected divisions to identify what the</p>

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<p>1 dollars would have been spent on in a</p> <p>2 particular year if they had not been spent on</p> <p>3 what you identified as opioid-related</p> <p>4 expenditures?</p> <p>5 MR. SOBOL: Objection. Asked</p> <p>6 and answered.</p> <p>7 THE WITNESS: Well, this</p> <p>8 follows from the question you asked a</p> <p>9 minute ago.</p> <p>10 For me to do what I needed to</p> <p>11 do, I needed to know what were the</p> <p>12 funds devoted to opioid-related</p> <p>13 activities.</p> <p>14 To identify an alternative</p> <p>15 world in which those funds were not</p> <p>16 devoted to opioid-related activities,</p> <p>17 it wasn't necessary for me to know</p> <p>18 what a particular official in a</p> <p>19 particular division in a particular</p> <p>20 year would have done alternatively.</p> <p>21 What I needed to establish is,</p> <p>22 here's what was spent on</p> <p>23 opioid-related activities, and these</p> <p>24 funds had alternative uses.</p> <p>25</p>	<p>1 And it wasn't necessary for me</p> <p>2 to come up with a reliable estimate of</p> <p>3 opportunity cost to know what, in an</p> <p>4 alternative world, a particular</p> <p>5 official would have done had some of</p> <p>6 those funds be freed up for other</p> <p>7 uses.</p> <p>8 It was sufficient for me to</p> <p>9 know that there were alternative uses</p> <p>10 of those funds, and I have a good</p> <p>11 economic measure of what the</p> <p>12 opportunity cost of those funds were.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. Did you talk to a single person</p> <p>15 who works for any of the Cuyahoga County</p> <p>16 affected divisions to identify what the</p> <p>17 dollars would have been spent on?</p> <p>18 MR. SOBOL: Objection. Asked</p> <p>19 and answered.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. Same answer?</p> <p>22 MR. SOBOL: Objection. Asked</p> <p>23 and answered.</p> <p>24 You may answer.</p> <p>25 THE WITNESS: Well, I would</p>
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<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Right. You said you didn't</p> <p>3 need to do it; you've made that point many</p> <p>4 times.</p> <p>5 Did you talk to a single person</p> <p>6 who works for any of the Summit County</p> <p>7 affected divisions to identify what the</p> <p>8 dollars would have been spent on --</p> <p>9 A. Yeah.</p> <p>10 Q. -- in a particular year if they</p> <p>11 hadn't been spent on what you identified as</p> <p>12 opioid-related expenditures?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. Did you do it?</p> <p>16 MR. SOBOL: Objection. Asked</p> <p>17 and answered.</p> <p>18 THE WITNESS: In order to have</p> <p>19 this answer be well-understood by</p> <p>20 whoever watches the tape or reads the</p> <p>21 transcript, I think it's important for</p> <p>22 me to take a minute to explain the --</p> <p>23 what I needed to do in this case,</p> <p>24 which is to identify the funds devoted</p> <p>25 to opioid-related activities.</p>	<p>1 just refer to my previous answer,</p> <p>2 which would be exactly the same, with</p> <p>3 a change in the location.</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. Did you review any historical</p> <p>6 budget or finance or accounting documents to</p> <p>7 identify what the dollars would have been</p> <p>8 spent on if they had not spent on what you</p> <p>9 identified as opioid-related activities?</p> <p>10 MR. SOBOL: Objection. Asked</p> <p>11 and answered.</p> <p>12 THE WITNESS: I have a hard</p> <p>13 time with a "would" verb here, but let</p> <p>14 me answer as best I can.</p> <p>15 In order to do my job of</p> <p>16 estimating opportunity cost, it was</p> <p>17 sufficient for me to identify how much</p> <p>18 of the funds of each division were</p> <p>19 devoted to opioid-related activities.</p> <p>20 It wasn't necessary for me to</p> <p>21 identify what would have happened had</p> <p>22 an official had more budget</p> <p>23 flexibility and they might have been</p> <p>24 able to move funds that -- funds that</p> <p>25 were not needed for opioid-related</p>

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<p>1 activities; only that there would be</p> <p>2 alternative uses for those funds and</p> <p>3 they would have been devoted to</p> <p>4 something.</p> <p>5 But I don't need to know</p> <p>6 exactly what the official would have</p> <p>7 done with those funds.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. Well, if you haven't talked to</p> <p>10 anyone and you haven't reviewed any</p> <p>11 historical budgeting, finance or accounting</p> <p>12 documents to identify what the dollars would</p> <p>13 have been spent on, because you say, "I just</p> <p>14 know they would have been spent on something</p> <p>15 else," how do you know that they would have</p> <p>16 been spent on something else?</p> <p>17 MR. SOBOL: Objection. Asked</p> <p>18 and answered.</p> <p>19 THE WITNESS: Well, this partly</p> <p>20 is -- pardon the expression -- common</p> <p>21 sense. For a household, for a</p> <p>22 corporation, for a government</p> <p>23 division, for the United Nations, for</p> <p>24 the federal government, if funds are</p> <p>25 not devoted to something in</p>	<p>1 things.</p> <p>2 MR. SOBOL: Objection.</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. Not that they would have,</p> <p>5 because I already asked you the "would have"</p> <p>6 questions, and you said you'd need to look</p> <p>7 into that.</p> <p>8 MR. SOBOL: Objection.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. So when you say you did speak</p> <p>11 with and find evidence in the deposition of</p> <p>12 that -- testimony that confirms the presence</p> <p>13 of alternative uses, you are flagging</p> <p>14 alternative possibilities, correct?</p> <p>15 MR. SOBOL: Objection. Asked</p> <p>16 and answered.</p> <p>17 THE WITNESS: Well, there's two</p> <p>18 things I spoke about. The first one</p> <p>19 was more general in a way, the</p> <p>20 economics of scarcity that talks about</p> <p>21 the availability of funds devoted to</p> <p>22 alternative uses.</p> <p>23 With respect to some of the</p> <p>24 diversion, there was more specifics in</p> <p>25 some of the testimony, some of the</p>
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<p>1 particular, they have alternative</p> <p>2 uses. And in my experience, that's a</p> <p>3 pretty general characterization of the</p> <p>4 situation of an economic actor.</p> <p>5 And a fundamental element of</p> <p>6 economics is scarcity. And what</p> <p>7 scarcity has to do with in this case</p> <p>8 is funds are limited. And when funds</p> <p>9 are limited, they have alternative</p> <p>10 uses.</p> <p>11 And just one more quick comment</p> <p>12 about this. I was interested in</p> <p>13 confirming evidence of diversion,</p> <p>14 which is another --</p> <p>15 QUESTIONS BY MR. KEYES:</p> <p>16 Q. Diversion of funds?</p> <p>17 A. Diversion of funds is something</p> <p>18 we've talked about earlier.</p> <p>19 And I did speak with and find</p> <p>20 written evidence of and read deposition</p> <p>21 testimony of -- that confirmed the presence</p> <p>22 of, you know, alternative uses of funds.</p> <p>23 Q. And when you say "alternative</p> <p>24 uses," you're saying possibilities; they</p> <p>25 could have spent the dollars on those other</p>	<p>1 deposition testimony, that had to do</p> <p>2 with police officers who may have</p> <p>3 spent -- had to spend time on</p> <p>4 opioid-related activities, who,</p> <p>5 according to the testimony that I</p> <p>6 remember, they not only could have but</p> <p>7 would have been attending to rapes and</p> <p>8 murders.</p> <p>9 So it's -- I mean, the</p> <p>10 could/would -- I hope I'm answering in</p> <p>11 the could/would space that you're</p> <p>12 asking about here.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. And the deposition testimony</p> <p>15 that you're referencing now is the deposition</p> <p>16 testimony you mentioned in your report?</p> <p>17 A. That's correct.</p> <p>18 Q. And you said a moment ago you</p> <p>19 spoke with people.</p> <p>20 Who did you speak with?</p> <p>21 I thought you said a week ago</p> <p>22 you spoke with Compass Lexecon, but you</p> <p>23 didn't speak with anyone from Cuyahoga County</p> <p>24 or Summit County.</p> <p>25 A. Well, I did --</p>

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<p>1 MR. SOBOL: Objection.</p> <p>2 What's the question?</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. Who'd you speak with?</p> <p>5 MR. SOBOL: About?</p> <p>6 THE WITNESS: I don't remember</p> <p>7 the names.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. And you don't remember their</p> <p>10 titles, correct?</p> <p>11 A. No, I'm not so good on that</p> <p>12 either. Sorry.</p> <p>13 Q. And you don't remember their</p> <p>14 functions, correct?</p> <p>15 A. Well, there was some public</p> <p>16 safety people. There was some EMS people.</p> <p>17 There was some fire department people.</p> <p>18 Q. Do you have any better</p> <p>19 recollection of any of those conversations</p> <p>20 today than you had a week ago?</p> <p>21 A. Not really, no, sorry.</p> <p>22 Q. Okay. And for the example you</p> <p>23 gave, how many rapes or murders were not</p> <p>24 investigated because of opioid-related</p> <p>25 spending?</p>	<p>1 you did not talk to anyone who works for</p> <p>2 Summit County or Cuyahoga County, correct?</p> <p>3 MR. SOBOL: Objection. Asked</p> <p>4 and answered.</p> <p>5 THE WITNESS: I think we --</p> <p>6 when we talked about this a week ago,</p> <p>7 there was some phone calls. I don't</p> <p>8 remember the names and dates or even</p> <p>9 how many I was on.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. Did you study whether any of</p> <p>12 the affected divisions in any particular year</p> <p>13 would have saved the money if they had not</p> <p>14 spent it on opioid-related expenditures?</p> <p>15 MR. SOBOL: Objection. Asked</p> <p>16 and answered.</p> <p>17 THE WITNESS: Again, the</p> <p>18 principle of opportunity costs implies</p> <p>19 that the right way to go about this</p> <p>20 from an economic point of view is to</p> <p>21 identify the magnitude of funds that</p> <p>22 are devoted to the opioid-related</p> <p>23 activities.</p> <p>24 And what the alternatives to a</p> <p>25 particular division are will vary.</p>
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<p>1 A. I'm not sure.</p> <p>2 Q. How many rapes or murders were</p> <p>3 not prosecuted because of opioid-related</p> <p>4 spending?</p> <p>5 A. I'm not sure.</p> <p>6 Q. How many rapes or murders were</p> <p>7 not resolved because of opioid-related</p> <p>8 spending?</p> <p>9 A. I'm not sure.</p> <p>10 Q. Can you identify for me a</p> <p>11 single rape or murder that wasn't</p> <p>12 investigated, wasn't prosecuted and wasn't</p> <p>13 resolved because of opioid-related spending?</p> <p>14 MR. SOBOL: Objection. Form.</p> <p>15 THE WITNESS: I'm sorry, I</p> <p>16 can't name names of the victims here.</p> <p>17 QUESTIONS BY MR. KEYES:</p> <p>18 Q. And when you spoke to people</p> <p>19 earlier, you listed those interviews in your</p> <p>20 report, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And the people you list in your</p> <p>23 report all work for Cleveland, correct?</p> <p>24 A. Yes.</p> <p>25 Q. So as we discussed a week ago,</p>	<p>1 And so long as they have alternative</p> <p>2 uses for the funds, the right metric</p> <p>3 of opportunity cost is the metric that</p> <p>4 I applied in my report.</p> <p>5 So I don't need to know whether</p> <p>6 they saved it or they spent it.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. For 2006, did the Summit County</p> <p>9 ADM Board spend all of the money in its</p> <p>10 approved budget?</p> <p>11 MR. SOBOL: Objection.</p> <p>12 THE WITNESS: I would have to</p> <p>13 go back and look.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. Was that relevant to your</p> <p>16 analysis, whether the Summit County ADM Board</p> <p>17 spent all of the money in its approved budget</p> <p>18 in 2006?</p> <p>19 A. Well, I was able to identify</p> <p>20 opportunity costs in that case by examining</p> <p>21 the opioid-related activities and the cost of</p> <p>22 those activities, without knowing how the</p> <p>23 funds otherwise would have been used.</p> <p>24 So just to complete your --</p> <p>25 complete the answer to the question, it</p>

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<p>1 wasn't necessary for me to know whether they</p> <p>2 spent or overspent their budget.</p> <p>3 Q. Did you investigate whether,</p> <p>4 for any year between 2006 and 2018, the</p> <p>5 Summit County ADM Board spent all of the</p> <p>6 money in its approved budget?</p> <p>7 MR. SOBOL: Objection.</p> <p>8 THE WITNESS: Well, this is</p> <p>9 similar to the question about a</p> <p>10 particular year.</p> <p>11 In order to do my job and</p> <p>12 estimate opportunity cost, it's</p> <p>13 sufficient for me to measure the funds</p> <p>14 devoted to opioid-related activities.</p> <p>15 How much they were spending on</p> <p>16 other activities, how much they</p> <p>17 were -- the budget, the fund balance</p> <p>18 went up and down, is not something I</p> <p>19 needed to know in order to come up</p> <p>20 with reliable, principled, definite</p> <p>21 measure of opportunity costs.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Is it accurate to say that you</p> <p>24 did not investigate whether, for any year</p> <p>25 between 2006 and 2018, the Summit County ADM</p>	<p>1 did not investigate whether, for any year</p> <p>2 between 2006 and 2018, any of the Summit</p> <p>3 County affected divisions spent all the money</p> <p>4 in their approved budgets?</p> <p>5 MR. SOBOL: Objection.</p> <p>6 THE WITNESS: So in order to</p> <p>7 make sure someone watching this or</p> <p>8 reading the transcript has a complete</p> <p>9 answer and a complete understanding of</p> <p>10 what I did, to the question, I need to</p> <p>11 explain briefly that the principle of</p> <p>12 opportunity cost, which is the way an</p> <p>13 economist thinks about these kind of</p> <p>14 situations, implies that what I should</p> <p>15 investigate and what I should measure</p> <p>16 are the funds devoted to</p> <p>17 opioid-related activities. Then I</p> <p>18 have what I need to know.</p> <p>19 And it's not necessary for me</p> <p>20 to go to an alternative world in which</p> <p>21 the funds would have been available</p> <p>22 and might have been spent on something</p> <p>23 else, other than to establish that</p> <p>24 they would have been available and</p> <p>25 could have been spent on something</p>
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<p>1 Board spent all of the money in its approved</p> <p>2 budget?</p> <p>3 MR. SOBOL: Objection. Asked</p> <p>4 and answered.</p> <p>5 THE WITNESS: Again, this is --</p> <p>6 in order for me to do my job and to</p> <p>7 measure the opportunity cost of funds</p> <p>8 that were devoted to opioid-related</p> <p>9 activities, it wasn't necessary for me</p> <p>10 to investigate what other uses there</p> <p>11 would have been for those funds, other</p> <p>12 than to establish, yes, there would be</p> <p>13 other uses for those funds.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. And when you --</p> <p>16 A. And just -- excuse me.</p> <p>17 And the details of what the</p> <p>18 funds would have been devoted to are -- I</p> <p>19 don't need to know those in order to measure</p> <p>20 opportunity costs.</p> <p>21 Q. When you tell me that it wasn't</p> <p>22 necessary to do it, you're explaining why you</p> <p>23 did not do it, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Is it accurate to say that you</p>	<p>1 else.</p> <p>2 QUESTIONS BY MR. KEYES:</p> <p>3 Q. When you tell me that it wasn't</p> <p>4 necessary to do it, you're explaining why you</p> <p>5 did not do it, correct?</p> <p>6 A. I thought that would be</p> <p>7 important for the audience to know.</p> <p>8 Q. Is it accurate to say that you</p> <p>9 did not investigate whether, for any year</p> <p>10 between 2006 and 2018, any of the Cuyahoga</p> <p>11 County affected divisions spent all the money</p> <p>12 in their approved budgets?</p> <p>13 MR. SOBOL: Objection. Asked</p> <p>14 and answered.</p> <p>15 THE WITNESS: Well, the answer</p> <p>16 to that would be exactly the same as I</p> <p>17 gave for the other county a few</p> <p>18 minutes ago.</p> <p>19 QUESTIONS BY MR. KEYES:</p> <p>20 Q. At any time in 2006, did the</p> <p>21 Summit County ADM Board seek permission to</p> <p>22 spend dollars beyond its approved budget on</p> <p>23 any opioid-related need?</p> <p>24 A. This is another version of the</p> <p>25 question we've been discussing today, and in</p>

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<p>1 order for me to identify the opportunity 2 costs of the funds they actually spent, it's 3 not necessary for me to know what they may 4 have wished to do, wanted to do, sought 5 permission to do, in order to accurately 6 identify what the opportunity cost of the 7 funds they actually spent are. 8 Q. And again, when you tell me 9 that it wasn't necessary to do it, you're 10 explaining why you did not do it, correct? 11 A. I think that's important for 12 the audience to hear. 13 Q. At any time between 2006 and 14 2018, did the Summit County ADM Board seek 15 permission to spend dollars beyond its 16 approved budget on any opioid-related need? 17 MR. SOBOL: Objection. 18 THE WITNESS: Okay. So to 19 understand my answer to this question, 20 it's important to keep in mind that 21 I'm applying the well-established 22 economic principle -- pardon me for 23 laughing; it's your fault -- of 24 opportunity cost. 25</p>	<p>1 want to make sure it's been stated. 2 And to reiterate, my assignment 3 in this case was to come up with a 4 reliable estimate of the opportunity 5 cost of funds that were devoted to 6 opioid-related activities. That's 7 what I did. 8 And in order to do that, it 9 wasn't necessary for me to know 10 whether the departments might have 11 preferred to do something else, 12 whether they might have over or 13 underspent on any particular thing, 14 whether they would have changed an 15 account, a program. All those things 16 are not necessary in order to just 17 follow through in a very common sense 18 thing of how much did they -- what was 19 the cost of opioid-related activities 20 in this division, in this year, is 21 what they spent on those things. 22 If they didn't spend that, they 23 would have had money to do something 24 else. 25</p>
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<p>1 QUESTIONS BY MR. KEYES: 2 Q. No, you have your speech, and 3 if you're going to give the speech in 4 response to every question, that's fine. But 5 I'm just trying to get a clear yes or no 6 answer to these questions, and you keep 7 giving me a long explanation why it's not 8 necessary. 9 At any time between 2006 and 10 2018, did the Summit County ADM Board seek 11 permission to spend dollars beyond its 12 approved budget on any opioid-related need? 13 MR. SOBOL: Asked and answered. 14 Objection. 15 THE WITNESS: Now, I'm very 16 aware that we've been round and round 17 on versions of this question. The way 18 I want to answer the question is to 19 make sure that if some viewer or 20 reader sees only a sound bite of my 21 testimony, that they understand what I 22 did and why I did it. 23 And I have said it a number of 24 times today, but, you know, within the 25 context of any particular question, I</p>	<p>1 QUESTIONS BY MR. KEYES: 2 Q. Did you investigate whether, at 3 any time between 2006 and 2018, any of the 4 Summit County or Cuyahoga County affected 5 divisions sought permission to spend dollars 6 beyond their approved budget on any 7 opioid-related need? 8 MR. SOBOL: Objection. Asked 9 and answered. 10 THE WITNESS: I'd just like to 11 refer to my previous answer, if you 12 find that -- 13 MR. SOBOL: No, if you have -- 14 what previous answer? 15 MR. KEYES: The one you just 16 said was asked and answered. It 17 wasn't asked and answered. This is a 18 distinct question. 19 QUESTIONS BY MR. KEYES: 20 Q. You want to incorporate your 21 last answer, but I want the record to be 22 clear, Professor McGuire. 23 A. Okay. 24 Q. So you did not investigate 25 whether at any time, in any year between 2006</p>

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<p>1 and 2018, any affected division of either</p> <p>2 Summit County or Cuyahoga County sought</p> <p>3 permission to spend dollars beyond their</p> <p>4 approved budget on any opioid-related need,</p> <p>5 correct?</p> <p>6 MR. SOBOL: Objection.</p> <p>7 Objection. Form. Also objection.</p> <p>8 Asked and answered.</p> <p>9 You give any form of an answer</p> <p>10 you would like.</p> <p>11 THE WITNESS: Okay. I'd like</p> <p>12 to give a complete answer to the</p> <p>13 question for a reader to understand my</p> <p>14 response to your very general</p> <p>15 question.</p> <p>16 And my answer is that for me to</p> <p>17 fulfill my assignment in this case,</p> <p>18 it's sufficient for me to know what</p> <p>19 each division, in each year, in each</p> <p>20 county, spent on opioid-related</p> <p>21 activities, which was the focus of my</p> <p>22 report: to identify those funds.</p> <p>23 It was not necessary for me</p> <p>24 to know whether any division, in any</p> <p>25 year, in either of the counties,</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Right.</p> <p>3 And the audience should</p> <p>4 understand that you didn't do it, and you</p> <p>5 were giving the reasons why you didn't do</p> <p>6 it --</p> <p>7 MR. SOBOL: Objection.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. -- right?</p> <p>10 MR. SOBOL: What's the...</p> <p>11 THE WITNESS: Well, I'm -- I</p> <p>12 was just trying to give a complete</p> <p>13 answer. I needed to explain a little</p> <p>14 bit about what opportunity cost was,</p> <p>15 what the nature of my assignment was,</p> <p>16 what I need to know in order to do</p> <p>17 that.</p> <p>18 It just doesn't take very long</p> <p>19 for me to say it. I'm pretty</p> <p>20 practiced at it now. But I think it's</p> <p>21 something for the audience that they</p> <p>22 need to hear.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. Right.</p> <p>25 But again, you told me what was</p>
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<p>1 sought to do something different.</p> <p>2 The opportunity cost is a very</p> <p>3 common sense approach that says, what</p> <p>4 is the opportunity cost of the</p> <p>5 \$200,000 that this division spent on</p> <p>6 opioid-related activities. It's</p> <p>7 \$200,000. They would have had that</p> <p>8 money to do something else.</p> <p>9 And it's sufficient to -- in</p> <p>10 application of the opportunity cost</p> <p>11 concept to be able to identify the</p> <p>12 magnitude of those funds and to</p> <p>13 establish they could have done</p> <p>14 something else with those funds.</p> <p>15 And that's what I did.</p> <p>16 QUESTIONS BY MR. KEYES:</p> <p>17 Q. And so that prior answer, you</p> <p>18 were explaining why you did not conduct that</p> <p>19 investigation I asked about, correct?</p> <p>20 MR. SOBOL: Objection. Asked</p> <p>21 and answered.</p> <p>22 THE WITNESS: I was trying to</p> <p>23 give a complete answer so the audience</p> <p>24 would understand what I did.</p> <p>25</p>	<p>1 sufficient. You told me what wasn't</p> <p>2 necessary.</p> <p>3 I want to know whether --</p> <p>4 regardless of whether it's necessary or not,</p> <p>5 did you do it. Did you investigate at any</p> <p>6 time, for any year between 2006 and 2018, for</p> <p>7 any affected division for either Summit</p> <p>8 County or Cuyahoga County, whether they</p> <p>9 sought permission to spend dollars beyond</p> <p>10 their approved budget on any opioid-related</p> <p>11 need?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. Did you do it?</p> <p>15 MR. SOBOL: Objection. Asked</p> <p>16 and answered.</p> <p>17 You may give an answer in any</p> <p>18 form you think appropriate.</p> <p>19 THE WITNESS: First of all, I</p> <p>20 don't see any distinction between the</p> <p>21 question you just asked and the</p> <p>22 question I referred to a few moments</p> <p>23 ago as being a very general question.</p> <p>24 And it seems like it's an</p> <p>25 important question, so in order to</p>

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<p style="text-align: right;">Page 549</p> <p>1 address it, I want to be sure to give</p> <p>2 a complete answer to the question.</p> <p>3 In order for me to do my</p> <p>4 assignment in assessing the</p> <p>5 opportunity cost for each division,</p> <p>6 for both counties, for all the years,</p> <p>7 it was necessary for me to identify</p> <p>8 the funds devoted to opioid-related</p> <p>9 activities.</p> <p>10 And that's what I did in my</p> <p>11 report. And that was sufficient to</p> <p>12 identify the opportunity cost of those</p> <p>13 funds.</p> <p>14 I didn't need to know whether</p> <p>15 any of those divisions in either of</p> <p>16 the counties, in any of the years,</p> <p>17 sought to do something different with</p> <p>18 their funds.</p> <p>19 The opportunity cost number is</p> <p>20 a very common sense concept. If a</p> <p>21 division spends \$200,000 on</p> <p>22 opioid-related activities in 2007,</p> <p>23 they could do something else with that</p> <p>24 money. The \$200,000 is the</p> <p>25 opportunity cost of those funds.</p>	<p style="text-align: right;">Page 551</p> <p>1 assignment in this report, which is to</p> <p>2 identify the opportunity cost of the funds</p> <p>3 devoted to opioid-related activities, it was</p> <p>4 sufficient for me to -- in each county, for</p> <p>5 each division, for each year, to identify the</p> <p>6 funds that were spent on opioid-related</p> <p>7 activities for that year.</p> <p>8 I did not need to know what</p> <p>9 might else have been done with those funds</p> <p>10 had their spending not taken place. So it</p> <p>11 wasn't necessary for me to know whether the</p> <p>12 divisions, in the years and the counties, had</p> <p>13 made some application for additional funds.</p> <p>14 The money spent on the</p> <p>15 opioid-related crisis is a very common sense</p> <p>16 measure of opportunity costs. If they spend</p> <p>17 \$200,000 on opioid-related activities and</p> <p>18 they didn't have to spend that money, they</p> <p>19 would have had \$200,000 to spend on something</p> <p>20 else.</p> <p>21 That's, you know, in short what</p> <p>22 I did.</p> <p>23 Q. When you said in your prior</p> <p>24 answer that it wasn't necessary to do it, you</p> <p>25 were explaining why you did not do it,</p>
<p style="text-align: right;">Page 550</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Did you investigate whether at</p> <p>3 any time, for any year between 2006 and 2018,</p> <p>4 any of the affected divisions for either</p> <p>5 Summit County or Cuyahoga County sought</p> <p>6 permission to spend dollars beyond their</p> <p>7 approved budget on a need not related to</p> <p>8 opioids?</p> <p>9 MR. SOBOL: Objection. Asked</p> <p>10 and answered.</p> <p>11 You may give an answer in any</p> <p>12 form that you'd like.</p> <p>13 THE WITNESS: I see this</p> <p>14 question as being slightly different.</p> <p>15 It's also a general question.</p> <p>16 The difference here is, it's</p> <p>17 the non-related activities as opposed</p> <p>18 to the opioid-related activities, if</p> <p>19 I'm following.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. Correct.</p> <p>22 A. Okay. And it's also an</p> <p>23 important question, one I want to make sure I</p> <p>24 give a thorough answer to.</p> <p>25 In order for me to fulfill my</p>	<p style="text-align: right;">Page 552</p> <p>1 correct?</p> <p>2 MR. SOBOL: Objection. Asked</p> <p>3 and answered.</p> <p>4 THE WITNESS: Well, I was</p> <p>5 explaining some of the basis for that,</p> <p>6 that -- what opportunity cost was,</p> <p>7 what was and was not necessary for me</p> <p>8 to determine that. You know, I think</p> <p>9 it's important for the reader or the</p> <p>10 viewer to hear that.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Did you identify any instance</p> <p>13 where at any point in time between 2006 and</p> <p>14 2018 any of the affected divisions for either</p> <p>15 Summit County or Cuyahoga County sought</p> <p>16 permission to spend dollars beyond their</p> <p>17 approved budget on a need related to or not</p> <p>18 related to opioids?</p> <p>19 MR. SOBOL: Objection. Asked</p> <p>20 and answered.</p> <p>21 You may answer.</p> <p>22 THE WITNESS: Truthfully -- of</p> <p>23 course, I've been truthful all</p> <p>24 morning, but I don't -- this seems to</p> <p>25 be a compound of two other questions</p>

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<p>1 that you asked earlier, those -- the</p> <p>2 request with respect to opioids and</p> <p>3 the request with respect to other</p> <p>4 things.</p> <p>5 QUESTIONS BY MR. KEYES:</p> <p>6 Q. I asked whether you identified</p> <p>7 any instance, before I asked whether you</p> <p>8 investigated, and you told me your reasons</p> <p>9 for not investigating.</p> <p>10 A. Oh.</p> <p>11 Q. Now I'm asking: Did you at any</p> <p>12 point in this engagement identify any</p> <p>13 instance, at any point in time between 2006</p> <p>14 and 2018, when any of the affected divisions</p> <p>15 for either Summit County or Cuyahoga County</p> <p>16 requested permission to spend dollars beyond</p> <p>17 their approved budget, either to meet an</p> <p>18 opioid-related need or to meet a</p> <p>19 nonopioid-related need?</p> <p>20 MR. SOBOL: Objection. Asked</p> <p>21 and answered and compound.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Any instance?</p> <p>24 MR. SOBOL: Objection. Already</p> <p>25 asked and compound.</p>	<p>1 hypothetical had the funds not been</p> <p>2 spent on opioid-related activities.</p> <p>3 It was sufficient for me to know the</p> <p>4 magnitude of those funds.</p> <p>5 And I think it's a very common</p> <p>6 sense concept that if a division is</p> <p>7 spending \$200,000 on opioid-related</p> <p>8 activities in a year, if they don't</p> <p>9 have to spend that, the \$200,000 would</p> <p>10 be available for something else.</p> <p>11 That's really all -- that's the kind</p> <p>12 of main point I'm making with the idea</p> <p>13 of opportunity cost.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. Did you find a single example</p> <p>16 of an affected division saying that it was</p> <p>17 not able to meet a need because funds had</p> <p>18 been redirected to cover an opioid-related</p> <p>19 need?</p> <p>20 MR. SOBOL: Objection. Asked</p> <p>21 and answered.</p> <p>22 THE WITNESS: This is also a</p> <p>23 pretty general question, and I want to</p> <p>24 make sure to give a complete answer to</p> <p>25 the question.</p>
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<p>1 But you may answer.</p> <p>2 THE WITNESS: Well, let me give</p> <p>3 a fresh answer just to avoid the back</p> <p>4 and forth about whether I've answered</p> <p>5 it already.</p> <p>6 It seems like it's an important</p> <p>7 question, it's a general question, and</p> <p>8 I want to make sure I give a complete</p> <p>9 answer to this.</p> <p>10 What I needed to do to fulfill</p> <p>11 my assignment was to identify for each</p> <p>12 division in each county, for all the</p> <p>13 years involved, what the</p> <p>14 opioid-related spending was in that</p> <p>15 division. That's the basis for an</p> <p>16 economist to determine what the</p> <p>17 opportunity cost of those funds are.</p> <p>18 What's not necessary for me to</p> <p>19 do is to know what else might have</p> <p>20 happened had those funds not been</p> <p>21 spent on opioid-related activities.</p> <p>22 So I didn't need to know</p> <p>23 whether divisions had submitted budget</p> <p>24 proposals or what particular other</p> <p>25 activities they would have done in a</p>	<p>1 In order for me to do my work,</p> <p>2 what I needed to do was identify the</p> <p>3 opioid-related spending. To an</p> <p>4 economist, that opioid-related</p> <p>5 spending is opportunity cost. And if</p> <p>6 those funds had not been devoted to</p> <p>7 opioid-related activities, they could</p> <p>8 have been devoted to something else.</p> <p>9 I don't need to know what</p> <p>10 officials in the divisions might have</p> <p>11 identified as their priorities for</p> <p>12 those funds but only to -- you know,</p> <p>13 only to note that those funds do have</p> <p>14 alternative uses. And if \$200,000 is</p> <p>15 devoted to opioid-related activities</p> <p>16 in a particular division in a</p> <p>17 particular year, had those funds not</p> <p>18 been used for opioid-related</p> <p>19 activities, they would have been</p> <p>20 available for something else.</p> <p>21 It's not rocket science. It's</p> <p>22 pretty straightforward that they spent</p> <p>23 \$200,000 on opioids. If they didn't</p> <p>24 have to spend that, they would have</p> <p>25 had the money for something else.</p>

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<p>1 That's the idea of opportunity cost.</p> <p>2 QUESTIONS BY MR. KEYES:</p> <p>3 Q. Did the Summit County or</p> <p>4 Cuyahoga County government incur any injury</p> <p>5 because it wasn't able to spend money on</p> <p>6 something because it was spending those</p> <p>7 dollars on an opioid-related service?</p> <p>8 MR. SOBOL: Objection. Asked</p> <p>9 and answered and form.</p> <p>10 You may answer.</p> <p>11 THE WITNESS: Can you clarify</p> <p>12 what injury means in this context?</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. Harm.</p> <p>15 A. I thought you might say that.</p> <p>16 Q. Did Summit County or Cuyahoga</p> <p>17 County government incur any harm because it</p> <p>18 wasn't able to spend money on something</p> <p>19 because it was spending those dollars on an</p> <p>20 opioid-related service?</p> <p>21 MR. SOBOL: Objection. Asked</p> <p>22 and answered. Form.</p> <p>23 THE WITNESS: I know you've</p> <p>24 told me injury is the same as harm,</p> <p>25 and earlier harm was the same as</p>	<p>1 It was not necessary for me to</p> <p>2 identify what other activities the</p> <p>3 funds would have been spent on or what</p> <p>4 the value of those other activities</p> <p>5 were; only to note that there are</p> <p>6 alternative uses for the funds that</p> <p>7 were devoted to opioid-related</p> <p>8 activities, and the officials in the</p> <p>9 division would have done something</p> <p>10 else with the money.</p> <p>11 And so an economist is asked:</p> <p>12 What is the metric or the measure of</p> <p>13 those opportunity costs?</p> <p>14 And it's a very natural,</p> <p>15 down-the-middle-of-the-plate,</p> <p>16 not-rocket-science part of economics,</p> <p>17 which is, that if a household spends</p> <p>18 \$75 on a car repair or a division</p> <p>19 spends \$200,000 on an opioid-related</p> <p>20 activity, that is the opportunity cost</p> <p>21 of those funds.</p> <p>22 That told me what I needed to</p> <p>23 know, and that's what I did.</p> <p>24 QUESTIONS BY MR. KEYES:</p> <p>25 Q. Now, Professor McGuire, you</p>
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<p>1 injury. It's a little unclear to me</p> <p>2 what that means in this context.</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. Are you offering any opinion</p> <p>5 that Summit County or Cuyahoga County</p> <p>6 suffered any injury or harm because it wasn't</p> <p>7 able to spend money on something because it</p> <p>8 was spending that money on an opioid-related</p> <p>9 service?</p> <p>10 MR. SOBOL: Objection. Asked</p> <p>11 and answered.</p> <p>12 THE WITNESS: I think I can at</p> <p>13 least somewhat address your question,</p> <p>14 and if I'm missing in my answer, then</p> <p>15 please let me know.</p> <p>16 It's also a very general</p> <p>17 question, and it sounds like an</p> <p>18 important question to me, so I want to</p> <p>19 be sure to give a complete answer to</p> <p>20 the question.</p> <p>21 What I needed to do in my</p> <p>22 report was to identify the opportunity</p> <p>23 cost of funds that were devoted to</p> <p>24 opioid-related activity, and that's</p> <p>25 what I did in my report.</p>	<p>1 know, you've said that, I bet, a few hundred</p> <p>2 times between last Tuesday and today. And</p> <p>3 you're an expert for the plaintiffs, and I'm</p> <p>4 entitled to probe whether you're offering an</p> <p>5 opinion or not.</p> <p>6 So this question is a yes or no</p> <p>7 question, and I am asking you to answer it</p> <p>8 yes or no, and then you can provide whatever</p> <p>9 explanation you think is appropriate.</p> <p>10 Are you offering an opinion</p> <p>11 that Summit County or Cuyahoga County</p> <p>12 suffered any injury or harm because the</p> <p>13 county wasn't able to spend money on</p> <p>14 something else because it was spending money</p> <p>15 on opioid-related services?</p> <p>16 MR. SOBOL: Objection, first,</p> <p>17 to the speech. I'm not sure if in the</p> <p>18 question you intend the witness to</p> <p>19 adopt your speech or not.</p> <p>20 Objection to the form, because</p> <p>21 you haven't defined injury or harm.</p> <p>22 And compound.</p> <p>23 THE WITNESS: Well, I have been</p> <p>24 attempting to answer your question as</p> <p>25 clearly and as completely as I can in</p>

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<p>1 the order in which I think it's most</p> <p>2 informative to provide the</p> <p>3 information.</p> <p>4 And that order starts with what</p> <p>5 was needed for me in order to complete</p> <p>6 my assignment. And then when I go on</p> <p>7 to say -- that's what I need to know.</p> <p>8 Then I say it was not necessary for me</p> <p>9 to investigate that.</p> <p>10 I think -- I didn't mean that</p> <p>11 to not be answering your question.</p> <p>12 When I say it wasn't necessary for me</p> <p>13 to investigate, then I didn't</p> <p>14 investigate it.</p> <p>15 QUESTIONS BY MR. KEYES:</p> <p>16 Q. So you did not investigate</p> <p>17 whether either Summit County or Cuyahoga</p> <p>18 County suffered any injury or harm because</p> <p>19 they spent money on opioid-related services</p> <p>20 rather than something else --</p> <p>21 MR. SOBOL: Objection.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. -- correct?</p> <p>24 MR. SOBOL: Objection. Asked</p> <p>25 and answered.</p>	<p>1 So when I come up with a</p> <p>2 measure \$200,000 were devoted to</p> <p>3 opioid-related activities in a</p> <p>4 division in a year, that tells me what</p> <p>5 I need know. I don't need to, and I</p> <p>6 didn't investigate, the particulars of</p> <p>7 what else they would have done with</p> <p>8 the funds.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. You identify that \$200,000 as</p> <p>11 an opportunity cost.</p> <p>12 MR. SOBOL: Objection.</p> <p>13 Is there a question?</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you are not offering an</p> <p>18 opinion that that \$200,000 is a harm or an</p> <p>19 injury to either Summit County or Cuyahoga</p> <p>20 County, correct?</p> <p>21 MR. SOBOL: Objection. Asked</p> <p>22 and answered.</p> <p>23 THE WITNESS: Well, you're</p> <p>24 coming back to the harm and injury,</p> <p>25 and you say harm is injury, injury is</p>
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<p>1 Again, you may answer in any</p> <p>2 format you'd like, despite the speech</p> <p>3 by counsel.</p> <p>4 THE WITNESS: Okay. This is</p> <p>5 returning to that very general and, it</p> <p>6 seems to me, potentially important</p> <p>7 question; that I think it's important</p> <p>8 for a viewer or a reader to understand</p> <p>9 what I did and why I did it.</p> <p>10 And what I did in order to</p> <p>11 fulfill my assignment was to identify</p> <p>12 the funds that were devoted to</p> <p>13 opioid-related activities. That's</p> <p>14 what corresponds to the tried and</p> <p>15 true, well-accepted, down-the-middle-</p> <p>16 of-the-plate concept of opportunity</p> <p>17 cost.</p> <p>18 The opportunity cost of those</p> <p>19 funds can be identified and measured</p> <p>20 without investigating what a</p> <p>21 particular division in a particular</p> <p>22 county in a particular year would have</p> <p>23 done in an alternative world in which</p> <p>24 those funds were not devoted to</p> <p>25 opioid-related crises.</p>	<p>1 harm. Neither of those are very</p> <p>2 helpful to me as an economist.</p> <p>3 And given the nature of this</p> <p>4 question, could you please clarify</p> <p>5 what harm and injury means in this</p> <p>6 context?</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. Are you saying that harm is not</p> <p>9 meaningful to you as an economist?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 THE WITNESS: I'm saying in</p> <p>12 this context, I'm not sure what you're</p> <p>13 asking.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. In the context of this</p> <p>16 engagement, are you saying that harm is not a</p> <p>17 meaningful concept to you?</p> <p>18 MR. SOBOL: Objection. Asked</p> <p>19 and answered.</p> <p>20 THE WITNESS: I'm saying in the</p> <p>21 context of this question, I'm not sure</p> <p>22 what you're referring to.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. Well, do you have an</p> <p>25 understanding of what harm means in the</p>

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<p style="text-align: right;">Page 565</p> <p>1 context of the opinions that you're offering</p> <p>2 regarding damages here?</p> <p>3 A. I understand what damages are.</p> <p>4 I understand what opportunity costs are, as I</p> <p>5 used it in my report. But I'm -- if that's</p> <p>6 what you mean, if you mean harm equals</p> <p>7 damages, then please tell me. If you mean</p> <p>8 harm equals opportunity cost, please tell me.</p> <p>9 If you mean harm equals something else, then</p> <p>10 please tell me that.</p> <p>11 Q. Well, my question was: Do you</p> <p>12 have an understanding of what harm means in</p> <p>13 the context of the opinions that you're</p> <p>14 offering regarding damages here?</p> <p>15 MR. SOBOL: Objection. Asked</p> <p>16 and answered.</p> <p>17 THE WITNESS: I don't have</p> <p>18 anything to add. This is -- I'm not</p> <p>19 meaning to be evasive. I'm just</p> <p>20 asking: In this context, what do you</p> <p>21 mean by harm?</p> <p>22 I studied damages. I studied</p> <p>23 opportunity costs. Is there something</p> <p>24 else?</p> <p>25</p>	<p style="text-align: right;">Page 567</p> <p>1 sentences before you begin paragraph 7, you</p> <p>2 say, "I refer to adverse health, public</p> <p>3 health, public welfare and criminal justice</p> <p>4 consequences of the opioid epidemic as</p> <p>5 harms."</p> <p>6 Do you see that language?</p> <p>7 A. I see that, yes.</p> <p>8 Q. You use the term "harms."</p> <p>9 MR. SOBOL: Objection.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. Okay?</p> <p>12 MR. SOBOL: Objection. Asked</p> <p>13 and answered.</p> <p>14 You may answer.</p> <p>15 QUESTIONS BY MR. KEYES:</p> <p>16 Q. So when you said before you</p> <p>17 don't know what harm means, I'm trying to</p> <p>18 reconcile that with the statements in your</p> <p>19 own report.</p> <p>20 MR. SOBOL: There's no question</p> <p>21 before you.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. So are you still saying you</p> <p>24 don't know what harm means --</p> <p>25 MR. SOBOL: Objection.</p>
<p style="text-align: right;">Page 566</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Did you study harm?</p> <p>3 MR. SOBOL: Objection. Asked</p> <p>4 and answered.</p> <p>5 THE WITNESS: Without telling</p> <p>6 me what it is, I can't tell you.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. Did you study any harm?</p> <p>9 MR. SOBOL: Objection. Asked</p> <p>10 and answered.</p> <p>11 THE WITNESS: Without you</p> <p>12 telling me what you mean by the word,</p> <p>13 I can't tell you.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. Well, sir, you say on page 4 of</p> <p>16 your report, you say, quote, "I refer to the</p> <p>17 adverse health, public welfare, public health</p> <p>18 and criminal justice consequences of the</p> <p>19 opioid epidemic as harms."</p> <p>20 You use the term "harms,"</p> <p>21 right? That's in your report.</p> <p>22 A. This is Exhibit 1?</p> <p>23 Q. Yes, page 4.</p> <p>24 A. One second.</p> <p>25 Q. Middle of the page, two</p>	<p style="text-align: right;">Page 568</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. -- in the context of this case?</p> <p>3 MR. SOBOL: Objection.</p> <p>4 Misleading, because it</p> <p>5 mischaracterizes his previous</p> <p>6 testimony.</p> <p>7 If you'd like to ask him what</p> <p>8 is meant by that section of his report</p> <p>9 regarding the plural harms, you may.</p> <p>10 THE WITNESS: I'm sorry, what</p> <p>11 question is pending?</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. So are you still saying you</p> <p>14 don't know what harm means in the context of</p> <p>15 this case?</p> <p>16 MR. SOBOL: Objection. Asked</p> <p>17 and answered.</p> <p>18 THE WITNESS: I think what I</p> <p>19 said was I didn't understand the way</p> <p>20 you were using harm in the question.</p> <p>21 QUESTIONS BY MR. KEYES:</p> <p>22 Q. Did you investigate whether</p> <p>23 Summit County or Cuyahoga County governments</p> <p>24 suffered any injury or harm because they</p> <p>25 spent money on opioid-related services rather</p>

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<p style="text-align: right;">Page 569</p> <p>1 than something else?</p> <p>2 MR. SOBOL: Objection. Asked</p> <p>3 and answered.</p> <p>4 THE WITNESS: I remember that</p> <p>5 question, and I believe my response</p> <p>6 was to request from you a</p> <p>7 clarification of what you mean in your</p> <p>8 question by harms and injury.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. Using the concept of harms that</p> <p>11 you discuss in your report, did you</p> <p>12 investigate whether Summit County or Cuyahoga</p> <p>13 County governments suffered any injury or</p> <p>14 harm because they spent money on</p> <p>15 opioid-related services rather than something</p> <p>16 else?</p> <p>17 A. Okay.</p> <p>18 MR. SOBOL: Objection.</p> <p>19 Compound.</p> <p>20 You can answer.</p> <p>21 THE WITNESS: All right. So</p> <p>22 now we're referring to my report,</p> <p>23 page 4, where I say, "I refer to the</p> <p>24 adverse health, public health, public</p> <p>25 welfare and criminal justice system</p>	<p style="text-align: right;">Page 571</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. When you refer to adverse</p> <p>3 health, public health, public welfare and</p> <p>4 criminal justice consequences of the opioid</p> <p>5 epidemic as harms, are you saying that those</p> <p>6 are harms suffered by Summit County or</p> <p>7 Cuyahoga County governments?</p> <p>8 A. Governments?</p> <p>9 Well, I tried to address this</p> <p>10 in my previous answer. And if we take just</p> <p>11 the first of these, health, if what you mean</p> <p>12 by affecting the health of a county</p> <p>13 government, that doesn't make sense to me</p> <p>14 because governments don't have health.</p> <p>15 What governments do is spend</p> <p>16 money on things. And if -- let me put it</p> <p>17 this way. With respect to the issue of</p> <p>18 whether the opioid epidemic caused government</p> <p>19 to spend money on health, then that's what my</p> <p>20 report is about.</p> <p>21 Q. Right. Right.</p> <p>22 So when you refer in the</p> <p>23 sentence to adverse health, public health,</p> <p>24 public welfare and criminal justice</p> <p>25 consequences of the opioid epidemic as harms,</p>
<p style="text-align: right;">Page 570</p> <p>1 consequences of the opioid epidemic as</p> <p>2 harms."</p> <p>3 So if I'm interpreting your</p> <p>4 question correctly, when you say "the</p> <p>5 county governments," were they</p> <p>6 affected, governments don't have</p> <p>7 health. Governments don't have</p> <p>8 welfare. They are engaged in</p> <p>9 activities related to public health,</p> <p>10 health and public welfare that</p> <p>11 involves spending money on those</p> <p>12 things.</p> <p>13 So if you're asking me as part</p> <p>14 of your question, did the health of</p> <p>15 county government, was that harmed by</p> <p>16 opioid-related activities, that</p> <p>17 question doesn't make sense to me.</p> <p>18 If you're asking me with</p> <p>19 respect to the activities of the</p> <p>20 county governments, was their spending</p> <p>21 on health or public health affected,</p> <p>22 that question does make sense to me,</p> <p>23 and I address it in this report in the</p> <p>24 form of studying opportunity cost.</p> <p>25</p>	<p style="text-align: right;">Page 572</p> <p>1 you are not referring to them as harms to the</p> <p>2 Summit County or Cuyahoga County governments,</p> <p>3 correct?</p> <p>4 MR. SOBOL: Objection. Asked</p> <p>5 and answered.</p> <p>6 THE WITNESS: No, that's not</p> <p>7 what I said.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. You talked about cost</p> <p>10 consequences of the harms. I'm asking about</p> <p>11 the harms that you refer to. Are those harms</p> <p>12 to the Cuyahoga County or Summit County</p> <p>13 governments?</p> <p>14 MR. SOBOL: Objection. Asked</p> <p>15 and answered.</p> <p>16 THE WITNESS: I don't have too</p> <p>17 much -- I don't have anything new to</p> <p>18 say about this, but let me say what I</p> <p>19 said again.</p> <p>20 With respect to health and</p> <p>21 whether there were any harms</p> <p>22 associated with health to county</p> <p>23 governments, that doesn't make sense</p> <p>24 to me as a question. Governments</p> <p>25 don't have health. What governments</p>

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<p style="text-align: right;">Page 573</p> <p>1 do is spend money on things and --</p> <p>2 including spending money on health.</p> <p>3 So to the extent that your</p> <p>4 question is about harms in the form of</p> <p>5 the opioid crisis leading to spending</p> <p>6 consequences for the county</p> <p>7 governments, I do address that in my</p> <p>8 report at some length.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. When you then refer to the cost</p> <p>11 consequences of harms to the bellwether</p> <p>12 governments, you are talking about the cost</p> <p>13 consequences to the governments, not the</p> <p>14 harms to the governments, correct?</p> <p>15 MR. SOBOL: Objection. Asked</p> <p>16 and answered.</p> <p>17 THE WITNESS: I don't know.</p> <p>18 You're attempting to sort of dissect</p> <p>19 these words. I'm not -- maybe you</p> <p>20 could break it down or something. I'm</p> <p>21 not really following.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. I'm looking at two sentences in</p> <p>24 your report.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 575</p> <p>1 MR. SOBOL: Objection. Asked</p> <p>2 and answered.</p> <p>3 THE WITNESS: I'm -- well, the</p> <p>4 sentence says what I mean. I'm not --</p> <p>5 QUESTIONS BY MR. KEYES:</p> <p>6 Q. You're talking about the cost</p> <p>7 consequences of harms, which consequences you</p> <p>8 say are borne by the governments.</p> <p>9 MR. SOBOL: Objection.</p> <p>10 THE WITNESS: The sentence</p> <p>11 says, "I refer to the cost</p> <p>12 consequences of harms" as damages.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. Right.</p> <p>15 And those cost --</p> <p>16 A. Okay.</p> <p>17 Q. Those cost consequences that</p> <p>18 you're referring to are what you've</p> <p>19 identified as the opportunity costs?</p> <p>20 MR. SOBOL: Objection. Asked</p> <p>21 and answered.</p> <p>22 THE WITNESS: That's generally</p> <p>23 correct, yes.</p> <p>24 QUESTIONS BY MR. KEYES:</p> <p>25 Q. Okay. And those are</p>
<p style="text-align: right;">Page 574</p> <p>1 Q. You say, "Finally, upon</p> <p>2 instruction from counsel, I refer to the cost</p> <p>3 consequences of harms to the bellwether</p> <p>4 governments due to defendants' misconduct as</p> <p>5 damages."</p> <p>6 Do you see that sentence?</p> <p>7 A. I see that, yeah.</p> <p>8 Q. Did you write that sentence?</p> <p>9 A. I absolutely wrote that</p> <p>10 sentence.</p> <p>11 Q. Did you write the prior</p> <p>12 sentence?</p> <p>13 A. I absolutely wrote the prior</p> <p>14 sentence.</p> <p>15 Q. You told me already you wrote</p> <p>16 the whole report, correct?</p> <p>17 A. I did, yes.</p> <p>18 Q. Okay. So focusing on this</p> <p>19 sentence, "I refer to the cost consequences</p> <p>20 of harms to the bellwether governments."</p> <p>21 Do you see that phrase?</p> <p>22 A. I see that.</p> <p>23 Q. You are talking about the cost</p> <p>24 consequences to the bellwether governments,</p> <p>25 not the harms to the governments, correct?</p>	<p style="text-align: right;">Page 576</p> <p>1 opportunity costs that you say were borne by</p> <p>2 Summit County and Cuyahoga County government</p> <p>3 as a result of the harms that you say result</p> <p>4 to the communities of the opioid epidemic?</p> <p>5 MR. SOBOL: Objection.</p> <p>6 THE WITNESS: Well, you're</p> <p>7 reading things that I didn't write</p> <p>8 here.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. I'm asking you a question about</p> <p>11 your opinions.</p> <p>12 A. Okay. I thought we were</p> <p>13 following along with the text here, but,</p> <p>14 sorry. Hit me with a question.</p> <p>15 Q. Well, you told me you couldn't</p> <p>16 explain the texts; you could only just keep</p> <p>17 referring to the text. So I'm expanding my</p> <p>18 questioning to give you different words to</p> <p>19 use.</p> <p>20 You said you have identified</p> <p>21 the opportunity costs as the cost</p> <p>22 consequences, correct?</p> <p>23 A. I said that, yes.</p> <p>24 MR. SOBOL: Objection. Asked</p> <p>25 and answered.</p>

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<p style="text-align: right;">Page 577</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. And those are the cost</p> <p>3 consequences of harms, correct?</p> <p>4 MR. SOBOL: Objection. Asked</p> <p>5 and answered.</p> <p>6 Or asked and not understood.</p> <p>7 But either way, I object.</p> <p>8 THE WITNESS: I think that's</p> <p>9 correct, yeah.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. And those are the cost</p> <p>12 consequences borne by the Summit County and</p> <p>13 Cuyahoga County governments, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And those are the cost</p> <p>16 consequences of harms that you've identified</p> <p>17 as adverse health, public health, public</p> <p>18 welfare and criminal justice consequences of</p> <p>19 the opioid epidemic, correct?</p> <p>20 MR. SOBOL: Objection.</p> <p>21 THE WITNESS: I think so.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. And those are the harms that</p> <p>24 you said didn't make any sense as being harms</p> <p>25 suffered by the Cuyahoga County or Summit</p>	<p style="text-align: right;">Page 579</p> <p>1 work on this engagement?</p> <p>2 A. Yes.</p> <p>3 Q. When did you visit Cuyahoga</p> <p>4 County?</p> <p>5 A. Sometime in July.</p> <p>6 Q. Is that when you met with</p> <p>7 officials from Cleveland?</p> <p>8 A. Yes.</p> <p>9 Q. Did you do anything else on</p> <p>10 that trip in connection with this engagement,</p> <p>11 other than meet with officials from</p> <p>12 Cleveland?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Have you visited Summit County</p> <p>15 for any reason since you were hired on this</p> <p>16 engagement?</p> <p>17 A. No, I don't think so.</p> <p>18 Q. Have you visited --</p> <p>19 A. I'm sure I didn't. I haven't</p> <p>20 been to Summit County.</p> <p>21 Q. Have you visited Cuyahoga</p> <p>22 County for any reason since you were hired on</p> <p>23 this engagement besides your meeting with the</p> <p>24 Cleveland officials?</p> <p>25 A. No, I have not.</p>
<p style="text-align: right;">Page 578</p> <p>1 County government, correct?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 Mischaracterizes the testimony.</p> <p>4 THE WITNESS: No, that's not</p> <p>5 what I said.</p> <p>6 QUESTIONS BY MR. KEYES:</p> <p>7 Q. When I asked you before when</p> <p>8 you referred to these adverse health, public</p> <p>9 health, public welfare and criminal justice</p> <p>10 consequences of the opioid epidemic that you</p> <p>11 describe as harms, and so are those harms</p> <p>12 incurred or suffered by Cuyahoga County or</p> <p>13 Summit County, you said that didn't make any</p> <p>14 sense to you, right?</p> <p>15 A. Well, when you talk about the</p> <p>16 Summit or Cuyahoga County governments, there</p> <p>17 was a sense in which it did not and a sense</p> <p>18 in which it did that I tried to explain in my</p> <p>19 answer.</p> <p>20 Q. Have you visited Summit County</p> <p>21 at any point in connection with your work on</p> <p>22 this engagement?</p> <p>23 A. I don't think I have, no.</p> <p>24 Q. Have you visited Cuyahoga</p> <p>25 County at any point in connection with your</p>	<p style="text-align: right;">Page 580</p> <p>1 Q. Have you ever been to Summit</p> <p>2 County?</p> <p>3 A. Ever? Oh, gosh. I visited a</p> <p>4 number of counties in Ohio in some other work</p> <p>5 I did for the Ohio government. I know I</p> <p>6 would have been to Columbus. There were</p> <p>7 others. I can't remember which of the others</p> <p>8 I visited.</p> <p>9 Q. Other than your visit with the</p> <p>10 Cleveland officials in July, have you ever</p> <p>11 visited Cuyahoga County?</p> <p>12 A. Well, in some previous work I</p> <p>13 did for the State of Ohio, I did some</p> <p>14 traveling, and it was at least Columbus, but</p> <p>15 I don't remember where else I would have</p> <p>16 visited.</p> <p>17 Q. Is Columbus in Cuyahoga County?</p> <p>18 A. No, it's not.</p> <p>19 Q. What county is it in?</p> <p>20 A. Columbus. Is it Columbus</p> <p>21 County? Sometimes they have the same name.</p> <p>22 Q. Do you know?</p> <p>23 A. I don't recall the county.</p> <p>24 Q. When were you first engaged on</p> <p>25 this case?</p>

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<p>1 A. Oh, in this case?</p> <p>2 Q. Yes.</p> <p>3 A. You mean not the thing I was</p> <p>4 referring to in the past, but --</p> <p>5 Q. This case.</p> <p>6 A. -- this case.</p> <p>7 It would have been, I think,</p> <p>8 maybe late May or June of 2018.</p> <p>9 Q. And when did you first start</p> <p>10 working with Compass Lexecon in this</p> <p>11 engagement?</p> <p>12 A. Soon after that.</p> <p>13 Q. So also May or June of 2018?</p> <p>14 A. Probably June.</p> <p>15 Q. Have you ever used a</p> <p>16 prescription opioid?</p> <p>17 A. Yes, I have.</p> <p>18 Q. How many times?</p> <p>19 A. What I -- this was in</p> <p>20 connection with hip surgery. And I was given</p> <p>21 some opioids to take home, which are</p> <p>22 prescription opioids, that I took for about</p> <p>23 two days, and then I stopped taking them.</p> <p>24 Q. What was the particular opioid</p> <p>25 that you were prescribed?</p>	<p>1 took it?</p> <p>2 A. I had a lot of pain before I</p> <p>3 had my surgery, and then, yeah, there was</p> <p>4 kind of pain throughout the process, yeah.</p> <p>5 Q. Did the prescription opioid</p> <p>6 that you took help with your pain?</p> <p>7 A. Well, you know, it's hard to</p> <p>8 know. You're asking, you know, if someone</p> <p>9 takes a drug -- say you take an</p> <p>10 antidepressant. Did your antidepressant</p> <p>11 help? It's hard to know. It's not an</p> <p>12 individual question.</p> <p>13 Maybe you don't -- still don't</p> <p>14 feel that great, but how would you have felt</p> <p>15 had you not taken the pill? You don't really</p> <p>16 know.</p> <p>17 And so in this case I had some</p> <p>18 pain. If you asked me the counterfactual</p> <p>19 question of how much pain I would have had</p> <p>20 without the opioid, I really can't tell you.</p> <p>21 Q. You said you stopped taking it</p> <p>22 after two days?</p> <p>23 A. Yes.</p> <p>24 Q. Did you have pain after you</p> <p>25 stopped taking it?</p>
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<p>1 A. I don't remember.</p> <p>2 Q. Was it prescribed by your</p> <p>3 physician?</p> <p>4 A. Well, it was given to me -- you</p> <p>5 know, I don't remember if I had it leaving</p> <p>6 the hospital, whether I had to pick it up. I</p> <p>7 don't remember. But it was prescribed by a</p> <p>8 physician in either case. It would have</p> <p>9 been, I think, prescribed by my surgeon.</p> <p>10 Q. And you took it for two days?</p> <p>11 A. Yes.</p> <p>12 Q. What was the specific drug?</p> <p>13 A. I don't remember.</p> <p>14 MR. SOBOL: Objection. Asked</p> <p>15 and answered.</p> <p>16 QUESTIONS BY MR. KEYES:</p> <p>17 Q. And why did you take it for</p> <p>18 those first two days?</p> <p>19 A. Because it was prescribed for</p> <p>20 me by my doctor.</p> <p>21 Q. What was it prescribed to you</p> <p>22 to do, as you understood it?</p> <p>23 A. My understanding was that it</p> <p>24 was prescribed in order to deal with pain.</p> <p>25 Q. Did you have pain before you</p>	<p>1 A. I had pain throughout the</p> <p>2 entire process, yes.</p> <p>3 Q. Did your pain increase after</p> <p>4 you stopped taking the prescription opioid?</p> <p>5 A. No, it didn't.</p> <p>6 Q. Did you take something else to</p> <p>7 address the pain when you stopped taking the</p> <p>8 prescription opioid?</p> <p>9 A. I also was, I think,</p> <p>10 requested -- or recommended to take, I think,</p> <p>11 ibuprofen. And I don't remember whether I</p> <p>12 just continued on the regimen that was</p> <p>13 recommended to me or whether I increased that</p> <p>14 in response. I don't remember.</p> <p>15 Q. Why did you stop taking the</p> <p>16 prescription opioid after two days?</p> <p>17 A. I thought it was prudent,</p> <p>18 frankly.</p> <p>19 Q. Why?</p> <p>20 A. Because opioids are dangerous</p> <p>21 drugs, and I didn't want to take it any</p> <p>22 longer than necessary.</p> <p>23 Q. Did you develop an addiction to</p> <p>24 opioids?</p> <p>25 A. No.</p>

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<p>1 Q. How did you know that opioids 2 are dangerous drugs and you shouldn't take it 3 any longer than necessary? 4 A. I was just aware of that from 5 my work as a health economist. This would 6 have been, you know, two or three years ago, 7 so well before I got involved in this matter. 8 Q. Is this the only time you used 9 a prescription opioid? 10 A. As far as I know, yes. 11 Q. You can't think of anything 12 before the hip surgery or after the hip 13 surgery where you used a prescription opioid? 14 MR. SOBOL: Objection. Asked 15 and answered. 16 THE WITNESS: No, I didn't use 17 prescription opioids otherwise. 18 QUESTIONS BY MR. KEYES: 19 Q. Regarding your quantification 20 of the opportunity costs in this case, do I 21 understand you correctly that if either 22 county government had decided to spend its 23 entire budget on opioid-related services, 24 then the opportunity costs that you describe 25 as damages here would be the entire budget of</p>	<p>1 costs? 2 MR. SOBOL: Objection. 3 THE WITNESS: Of course this 4 is -- 5 QUESTIONS BY MR. KEYES: 6 Q. And no damages using your 7 formulation? 8 A. Well, this is also a funny 9 question, that they would have spent nothing. 10 But in the case in which they literally spent 11 nothing on opioid-related activities, then 12 there was no sacrifice of other uses of the 13 funds. So the appropriate measure of 14 opportunity cost in that case would be zero. 15 Q. And under your approach to 16 quantifying opportunity cost, if the county 17 government had decided to spend 50 percent of 18 its total budget on opioid-related services, 19 then you would say the damages are 50 percent 20 of the budget? 21 MR. SOBOL: Objection. Asked 22 and answered. 23 QUESTIONS BY MR. KEYES: 24 Q. Is that correct? 25 MR. SOBOL: You may answer, but</p>
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<p>1 the county? 2 MR. SOBOL: Objection. Asked 3 and answered. 4 THE WITNESS: It's kind of a 5 funny question, that among all the 6 things any of these divisions -- or in 7 this case I think you're asking about 8 the entire government -- would have 9 spent only on opioid-related 10 activities, so long as there are 11 alternative uses for those funds, even 12 if the government, in its wisdom, 13 decides only to devote the funds to 14 opioid-related activities, so long as 15 there are other things the government 16 could have done, then it's -- unless 17 I'm misunderstanding your question, 18 then, yes, it's the right measure of 19 opportunity cost. 20 QUESTIONS BY MR. KEYES: 21 Q. And do I understand that under 22 your approach in quantifying the opportunity 23 costs, that if the county government had 24 decided to spend nothing on opioid-related 25 services, then there would be no opportunity</p>	<p>1 I do object. 2 THE WITNESS: Well, I think 3 I've spanned the responsibilities from 4 zero to 100 percent, and 50 percent 5 isn't qualitatively different. 6 If they spent -- and let's just 7 use a number. If they spent 8 \$10 million, it represents 50 percent 9 of their budget on opioid-related 10 activities, then that's the right 11 measure of opportunity cost. 12 QUESTIONS BY MR. KEYES: 13 Q. And so under your approach to 14 measuring opportunity costs, which you say 15 are damages, the value of the damages depends 16 entirely on how much money the county decides 17 to spend on opioid-related services, using 18 your logic, right? 19 MR. SOBOL: Objection. Form. 20 You may answer. 21 THE WITNESS: Well, in my 22 report I'm applying the, you know, 23 well-accepted concept of opportunity 24 cost. And, yes, it kind of makes 25 sense as a -- you know, just from</p>

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<p>1 common sense and certainly is</p> <p>2 well-supported by economics that if a</p> <p>3 household, or a government in this</p> <p>4 case, spends a hundred dollars on</p> <p>5 something, then they would have had</p> <p>6 that hundred dollars to spend on</p> <p>7 something else, and that's the right</p> <p>8 measure of opportunity cost.</p> <p>9 Unless I'm missing some</p> <p>10 subtlety in your question, then the</p> <p>11 answer is, yes, that's the opportunity</p> <p>12 cost of the funds.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. And you equate opportunity cost</p> <p>15 with damages based on the instruction that</p> <p>16 you received from plaintiffs' counsel,</p> <p>17 correct?</p> <p>18 A. Well, the opportunity cost is</p> <p>19 an economic concept, and so that's -- that</p> <p>20 comes from me, you know, what is the</p> <p>21 opportunity cost of these funds. We</p> <p>22 discussed that today.</p> <p>23 I put damages in quotes because</p> <p>24 that's -- on instruction from counsel, I</p> <p>25 refer to them as damages.</p>	<p>1 Seven days?</p> <p>2 A. More than two.</p> <p>3 Q. 30 days? Different?</p> <p>4 A. I don't know. I don't</p> <p>5 remember.</p> <p>6 Q. When you stopped taking the</p> <p>7 prescription opioid after two days, did you</p> <p>8 have additional pills left over?</p> <p>9 A. Yes.</p> <p>10 Q. What did you do with them?</p> <p>11 A. Threw them out.</p> <p>12 Q. Where?</p> <p>13 A. In the trash.</p> <p>14 Q. Okay. How did you know to do</p> <p>15 that?</p> <p>16 MR. SOBOL: Objection. Assumes</p> <p>17 a fact not in evidence.</p> <p>18 THE WITNESS: Well, I thought</p> <p>19 it was --</p> <p>20 MR. KEYES: He just said he</p> <p>21 threw them out.</p> <p>22 THE WITNESS: Yeah.</p> <p>23 MR. KEYES: I'm asking, how did</p> <p>24 he know to throw them out.</p> <p>25 MR. SOBOL: But that assumes</p>
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<p>1 Q. Because -- I want to make sure.</p> <p>2 You quantify opportunity costs, right?</p> <p>3 A. Yes.</p> <p>4 Q. And you say the opportunity</p> <p>5 costs are the cost consequences to the Summit</p> <p>6 County and Cuyahoga County governments as a</p> <p>7 result of these harms resulting from the</p> <p>8 opioid epidemic, right?</p> <p>9 MR. SOBOL: Objection. Asked</p> <p>10 and answered.</p> <p>11 THE WITNESS: I think that's</p> <p>12 correct, yes.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. And you call those opportunity</p> <p>15 costs damages because you were instructed to</p> <p>16 do so by counsel, correct?</p> <p>17 A. Let me just make sure.</p> <p>18 Upon instruction from counsel,</p> <p>19 I refer to cost consequences as damages, yes.</p> <p>20 Q. Going back to your</p> <p>21 prescription, what was -- how many days was</p> <p>22 your prescription for for the prescription</p> <p>23 opioid?</p> <p>24 A. Longer, but I don't remember.</p> <p>25 Q. What do you mean by "longer"?</p>	<p>1 that he knew to throw them out, rather</p> <p>2 than something else.</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. Did you throw them out on</p> <p>5 purpose or by accident?</p> <p>6 A. They slipped out of my hand and</p> <p>7 went in the trash, and they were gone.</p> <p>8 Q. No, for real. Did you throw</p> <p>9 them out by accident --</p> <p>10 A. No, I didn't.</p> <p>11 Q. -- or on purpose?</p> <p>12 A. I threw them out on purpose.</p> <p>13 Q. Okay. How did you know to</p> <p>14 throw them out on purpose?</p> <p>15 A. Well, as I mentioned a few</p> <p>16 minutes ago, they're risky drugs, and I</p> <p>17 thought that whatever pain I had was already</p> <p>18 well-managed, that it didn't make sense to</p> <p>19 pop these pills.</p> <p>20 Q. If you turn to page 44 of your</p> <p>21 report.</p> <p>22 A. Yes.</p> <p>23 THE WITNESS: I'd like to get</p> <p>24 some water. We don't need to take a</p> <p>25 break, but just get some water.</p>

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<p>1 MR. KEYES: Well, why don't we 2 take a break then. 3 VIDEOGRAPHER: The time is 4 11:56 a.m., and we're off the record. 5 (Off the record at 11:56 a.m.) 6 VIDEOGRAPHER: The time is 7 12:10 p.m., and we're on the record. 8 QUESTIONS BY MR. KEYES: 9 Q. Professor McGuire, do you have 10 Exhibit Number 1 in front of you, which is 11 your report on damages? 12 A. Yes, I do. 13 Q. And are you at page 44? 14 A. Yes, I am. 15 Q. And in paragraph 76, you 16 identify what you claim are damages for 17 Cuyahoga County under Approaches 1 and 2? 18 A. That's correct. 19 Q. And you set forth those damages 20 in Table 4.12? 21 A. That's correct. 22 Q. And in paragraph 77, you 23 identify what you claim are damages for 24 Summit County under Approaches 1 and 2? 25 A. That's correct.</p>	<p>1 and 46 are the only opinions you have on 2 damages? 3 MR. SOBOL: Objection. 4 QUESTIONS BY MR. KEYES: 5 Q. The quantification of damages? 6 MR. SOBOL: Objection. 7 THE WITNESS: I believe that's 8 correct, yes. 9 QUESTIONS BY MR. KEYES: 10 Q. Okay. Then would you turn to 11 Appendix 4.E of your report. It's towards 12 the very back. 13 A. Okay. Okay. 14 Q. Are you on Appendix 4.E? 15 A. I am, yes. 16 Q. Okay. 4.E is titled "Damages 17 Due to Shipments." 18 What is Appendix 4.E showing, 19 if you know? 20 A. I do know. I tried to explain 21 this in the first couple of sentences there. 22 They show the -- as the title 23 of the tables say, the share of harms due to 24 all shipments. 25 Q. I must be confused then,</p>
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<p>1 Q. And you set forth those damages 2 in Table 4.13? 3 A. That's correct. 4 Q. And then you aggregate those 5 numbers in Table 4.14 on page 46, correct? 6 A. That's correct. 7 Q. Are those the damages 8 calculations that you performed? 9 A. Yes. 10 Q. Did you perform any other 11 damages calculations that are not set forth 12 in these tables? 13 MR. SOBOL: You mean drafts? 14 MR. KEYES: Of any sort. 15 MR. SOBOL: Well, then I 16 instruct him not to answer. 17 QUESTIONS BY MR. KEYES: 18 Q. Well, did you perform any other 19 damage calculations that are not set forth in 20 these tables where you are offering the 21 opinion that those are damages calculations? 22 A. This is my opinion. There's no 23 opinions I have other than what you see here. 24 Q. Okay. So the opinions that you 25 set forth regarding damages on pages 44, 45</p>	<p>1 because I asked you earlier whether the 2 opinions that you set forth regarding damages 3 on pages 44, 45 and 46 are the only opinions 4 you have quantifying damages, and you said, 5 quote, "I believe that's correct, yes." 6 So what is Appendix 4.E 7 intended to show -- 8 A. Okay. 9 Q. -- if not quantification of 10 damages? 11 A. Okay. 12 MR. SOBOL: Objection to the 13 form. 14 You can answer. 15 THE WITNESS: This appendix was 16 prepared in order to -- just one 17 second. 18 All right. These were prepared 19 as -- in response to what I needed for 20 the public nuisance report. 21 QUESTIONS BY MR. KEYES: 22 Q. What do you mean? 23 A. I mean in the public nuisance 24 report, which we haven't talked about yet, 25 but I think you obviously know what I'm</p>

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<p>1 referring to, the charge there was slightly</p> <p>2 different. It was in order to assess harms</p> <p>3 and quantify the harms to the counties from</p> <p>4 the opioid crisis, from -- due to the</p> <p>5 shipments, and these tables fed into those</p> <p>6 opinions.</p> <p>7 Q. And when you say "quantify the</p> <p>8 harms to the counties," you're talking about</p> <p>9 to the communities or individuals in the</p> <p>10 communities, not the governments, correct?</p> <p>11 A. It's not restricted to the</p> <p>12 governments.</p> <p>13 Q. Okay. So how are the</p> <p>14 calculations in Appendix 4.E different than</p> <p>15 the calculations on pages 44, 45 and 46 in</p> <p>16 your report?</p> <p>17 A. Okay. These are different in</p> <p>18 that they don't take account of the estimates</p> <p>19 from the Rosenthal report of the share of</p> <p>20 shipments due to misconduct.</p> <p>21 MR. SOBOL: Let the record</p> <p>22 reflect that the "these" he was</p> <p>23 pointing to, Appendix 4.E.</p> <p>24 THE WITNESS: The tables in</p> <p>25 Appendix 4.E that we've been</p>	<p>1 others.</p> <p>2 Then I showed you Appendix 4.E,</p> <p>3 and you said, yes, those are calculations</p> <p>4 needed for the nuisance report.</p> <p>5 I said: Did you perform any</p> <p>6 other calculations of what you contend to be</p> <p>7 damages.</p> <p>8 You said: No.</p> <p>9 What is Appendix 4.F then?</p> <p>10 MR. SOBOL: Objection. I don't</p> <p>11 think he's asking you, but maybe he</p> <p>12 is, to adopt his rendition of the</p> <p>13 prior testimony, which I object to,</p> <p>14 with the last sentence or -- you can</p> <p>15 answer: What is Appendix 4.F?</p> <p>16 THE WITNESS: Appendix 4.F is a</p> <p>17 illustration of how the methodology</p> <p>18 could be applied to a different</p> <p>19 question, which would be the share of</p> <p>20 misconduct attributable to -- this is</p> <p>21 the distributors.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Based on what conduct of the</p> <p>24 distributors?</p> <p>25 A. That's something that I didn't</p>
Page 598	Page 600
<p>1 discussing.</p> <p>2 QUESTIONS BY MR. KEYES:</p> <p>3 Q. And so which set of</p> <p>4 calculations do you intend to show a jury:</p> <p>5 the ones in pages 44 through 46 of your</p> <p>6 report or the calculations in Appendix 4.E?</p> <p>7 MR. SOBOL: Objection. Form.</p> <p>8 THE WITNESS: Well, I think it</p> <p>9 depends on -- in response to what</p> <p>10 question I'm asked.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Have you performed any other</p> <p>13 what you call "damages calculations" besides</p> <p>14 Appendix 4.E and what you list in pages 44</p> <p>15 through 46 in your report?</p> <p>16 MR. SOBOL: Excluding drafts?</p> <p>17 MR. KEYES: Excluding drafts.</p> <p>18 THE WITNESS: Excluding drafts,</p> <p>19 no, I don't think so.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. Okay. Would you turn to</p> <p>22 Appendix 4.F.</p> <p>23 You told me that the only</p> <p>24 damages calculations you performed were</p> <p>25 pages 44 through 46. You said there were no</p>	<p>1 deal with in my report.</p> <p>2 Q. Okay. How did you go about</p> <p>3 arriving at the figures that are in</p> <p>4 Appendix 4.F?</p> <p>5 A. This is, again, in the same way</p> <p>6 as some of the other figures, that these</p> <p>7 percentages were provided to me, and then I</p> <p>8 applied them to the potentially affected</p> <p>9 costs to get an estimate of damages.</p> <p>10 Q. You say "these percentages."</p> <p>11 Are you referring to the percentages in Table</p> <p>12 F.1?</p> <p>13 A. F.1 and F.2, yes.</p> <p>14 Q. Okay. What about -- and did</p> <p>15 you apply those percentages to dollar figures</p> <p>16 to arrive at the dollars shown in Tables F.3</p> <p>17 and F.4?</p> <p>18 A. That's correct, yes.</p> <p>19 Q. Okay. So did you simply take</p> <p>20 what you identified as the affected costs and</p> <p>21 multiply them by the percentages in Table F.1</p> <p>22 and F.2?</p> <p>23 MR. SOBOL: Objection.</p> <p>24 THE WITNESS: Yeah. Yes.</p> <p>25</p>

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<p style="text-align: right;">Page 601</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Where did the percentages come</p> <p>3 from that you used in these calculations and</p> <p>4 which are set forth in Table F.1 and F.2?</p> <p>5 A. These came from Cutler report,</p> <p>6 Appendix 3.J.</p> <p>7 Q. And how do you know that?</p> <p>8 A. I looked at it.</p> <p>9 Q. Where do you cite 3.J? In</p> <p>10 footnote 1?</p> <p>11 A. In footnote 1, yeah.</p> <p>12 Q. So you received these</p> <p>13 percentages from Professor Cutler.</p> <p>14 Did you independently arrive at</p> <p>15 those percentages or just take the ones you</p> <p>16 had received from Professor Cutler?</p> <p>17 MR. SOBOL: Object to form.</p> <p>18 You may answer.</p> <p>19 THE WITNESS: This was what you</p> <p>20 would call input from Professor</p> <p>21 Cutler.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Did you do anything to test or</p> <p>24 validate that input, namely the percentages</p> <p>25 that Professor Cutler provided?</p>	<p style="text-align: right;">Page 603</p> <p>1 A. And then he arrives at a</p> <p>2 percentage.</p> <p>3 Q. So he starts with percentages</p> <p>4 derived by Professor Rosenthal, correct?</p> <p>5 MR. SOBOL: Objection.</p> <p>6 Go ahead.</p> <p>7 THE WITNESS: Not maybe start</p> <p>8 with, but he has them.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. Okay. And what testing of</p> <p>11 Professor Rosenthal's percentages did</p> <p>12 Professor Cutler do?</p> <p>13 MR. SOBOL: Objection. Scope.</p> <p>14 THE WITNESS: Well, that's</p> <p>15 really a question for Professor Cutler</p> <p>16 rather than Tom.</p> <p>17 QUESTIONS BY MR. KEYES:</p> <p>18 Q. Do you know what testing, if</p> <p>19 any, he did?</p> <p>20 MR. SOBOL: Objection. Scope.</p> <p>21 THE WITNESS: Well, he would</p> <p>22 have -- I'm a little reluctant to</p> <p>23 speak for him subjectively.</p> <p>24 QUESTIONS BY MR. KEYES:</p> <p>25 Q. I'm not asking you to speak for</p>
<p style="text-align: right;">Page 602</p> <p>1 A. No, I depended on him for those</p> <p>2 percentages.</p> <p>3 Q. What is Table 4 -- I'm sorry,</p> <p>4 Appendix 4.G?</p> <p>5 A. Professor Rosenthal conducted</p> <p>6 her empirical work in two ways, and what 4.G</p> <p>7 refers to is the same kind of calculations</p> <p>8 with different Rosenthal estimates.</p> <p>9 Q. And then did Professor Cutler</p> <p>10 take those percentages from Professor</p> <p>11 Rosenthal and do something?</p> <p>12 A. My understanding of what</p> <p>13 Professor Cutler did was multiply some things</p> <p>14 together.</p> <p>15 Q. What did he multiply, as you</p> <p>16 understand it?</p> <p>17 A. The Rosenthal percent times his</p> <p>18 own percent of harms due to shipments.</p> <p>19 Rosenthal was misconduct of the shipments.</p> <p>20 Cutler was shipments due to harms. And to</p> <p>21 attribute the share of harms due to</p> <p>22 misconduct, he multiplies those two things</p> <p>23 together.</p> <p>24 Q. And then he arrives at a</p> <p>25 percentage?</p>	<p style="text-align: right;">Page 604</p> <p>1 him. I'm asking what you know.</p> <p>2 What do you know about whether</p> <p>3 Professor Cutler tested the percentages that</p> <p>4 he received from Professor Rosenthal?</p> <p>5 MR. SOBOL: Objection. Scope.</p> <p>6 THE WITNESS: He would have</p> <p>7 reviewed them and determined that they</p> <p>8 were reasonable from his perspective.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. You say "would have."</p> <p>11 Did he do that?</p> <p>12 A. Yes.</p> <p>13 MR. SOBOL: Objection. Scope.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. How do you know that?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 Just the -- not the content</p> <p>18 but -- if counsel were present, but</p> <p>19 the method.</p> <p>20 THE WITNESS: I'm sorry, I</p> <p>21 didn't hear the objection.</p> <p>22 MR. SOBOL: So he just asked</p> <p>23 you a question. You could either say</p> <p>24 it was by telephone or you could give</p> <p>25 the content of the communication.</p>

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<p>1 If counsel were there, you're</p> <p>2 not to testify regarding what the</p> <p>3 content of the communication was.</p> <p>4 THE WITNESS: Okay. Yes, there</p> <p>5 were, you know, more than one meeting</p> <p>6 in which the analyses were reviewed.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. Okay. And then Professor</p> <p>9 Cutler separately derived another set of</p> <p>10 percentages, right?</p> <p>11 A. That's correct.</p> <p>12 MR. SOBOL: Objection.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. And did you test that separate</p> <p>15 second set of percentages?</p> <p>16 A. In the same sense that I</p> <p>17 mentioned for Cutler and Rosenthal.</p> <p>18 Q. Okay. And then you understand</p> <p>19 that Professor Cutler took the first</p> <p>20 percentages that he received from Professor</p> <p>21 Rosenthal and multiplied them by a set of</p> <p>22 percentages that he had calculated to arrive</p> <p>23 at a third set of percentages, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And that third set of</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. I'm showing you what has been</p> <p>3 marked as McGuire Exhibit 6.</p> <p>4 Is this your report?</p> <p>5 A. Yes, it is.</p> <p>6 Q. Would you turn to page 81 of</p> <p>7 McGuire Exhibit 6?</p> <p>8 Are you there?</p> <p>9 A. I'm there.</p> <p>10 Q. There's a signature?</p> <p>11 A. I see it.</p> <p>12 Q. Is that your signature?</p> <p>13 A. Yes, it is.</p> <p>14 Q. And by that signature did you</p> <p>15 intend to confirm that this is your report?</p> <p>16 A. Yes.</p> <p>17 Q. And it sets forth your</p> <p>18 opinions?</p> <p>19 A. That's correct.</p> <p>20 Q. And your calculations?</p> <p>21 A. Yes.</p> <p>22 Q. And your work?</p> <p>23 A. Yes.</p> <p>24 Q. And your words?</p> <p>25 A. Yes.</p>
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<p>1 percentages Professor Cutler provided to you?</p> <p>2 A. Correct.</p> <p>3 Q. And those are the percentages</p> <p>4 that you use in Table G.1 and Table G.2?</p> <p>5 A. Correct.</p> <p>6 Q. To arrive at your figures?</p> <p>7 A. Correct.</p> <p>8 Q. Did you do any testing of the</p> <p>9 percentages that you received from Professor</p> <p>10 Cutler in order to do the calculations that</p> <p>11 you performed in Appendix 4.G?</p> <p>12 A. Only in the sense that I've</p> <p>13 mentioned so far.</p> <p>14 Q. Nothing else, correct?</p> <p>15 A. Well, it's a pretty general yes</p> <p>16 answer, but...</p> <p>17 Q. You prepared a second report on</p> <p>18 public nuisance, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And you also issued that report</p> <p>21 on March 25, 2019?</p> <p>22 A. That's correct.</p> <p>23 (McGuire Exhibit 6 marked for</p> <p>24 identification.)</p> <p>25</p>	<p>1 Q. Did you write this opinion?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Did anyone else write portions</p> <p>4 of it for you?</p> <p>5 A. No.</p> <p>6 Q. Okay. Who else was involved in</p> <p>7 the preparation of this report?</p> <p>8 A. There would have been support</p> <p>9 staff from the two firms we spoke about last</p> <p>10 Tuesday: Compass Lexecon and Greylock</p> <p>11 McKinnon Associates.</p> <p>12 Q. And who from Compass Lexecon</p> <p>13 assisted you on this report on public</p> <p>14 nuisance?</p> <p>15 A. It would have been Hal Sider,</p> <p>16 Alice Kaminski, Evan McKay, and someone I</p> <p>17 forgot to mention last time that I feel a</p> <p>18 little bad about is Heather Spang, who</p> <p>19 assisted on both reports. I just...</p> <p>20 Q. How do you spell Ms. Spang's</p> <p>21 last name?</p> <p>22 A. S-p-a-n-g.</p> <p>23 Q. And what was her role on the</p> <p>24 damages report, if you forget to mention her</p> <p>25 last week?</p>

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<p style="text-align: right;">Page 609</p> <p>1 A. For a while, she was my first 2 contact if there was something to be done on 3 damages and something she did or she would 4 have enlisted other staff. 5 Q. And what was her role with 6 respect to the substance of your damages 7 report? 8 A. Well, I mean, her role was what 9 I just described. If I needed something or 10 had a question, I would first go to her and 11 she would try to help me. 12 Q. Did she interview people at 13 Summit County? 14 A. She may have. I'm not 15 100 percent sure. 16 Q. Did she interview people at 17 Cuyahoga County? 18 A. I'm not sure about that either. 19 Q. How did you remember that 20 Heather Spang had a role in the damages 21 report when it didn't occur to you last 22 Tuesday? 23 A. That's -- I don't know. I 24 just -- I had the feeling when we talked last 25 Tuesday that I was forgetting somebody, and I</p>	<p style="text-align: right;">Page 611</p> <p>1 Q. And what was Greylock McKinnon 2 Associates' role on the damages report? 3 A. Also to help support my report 4 writing. 5 Q. What did Greylock McKinnon 6 Associates do to help support your report 7 writing? 8 A. I would identify literature 9 that I needed to understand or information I 10 needed, and they would help me with that. 11 Q. How many people were on the 12 Greylock McKinnon Associates team helping you 13 on the damages report? 14 MR. SOBOL: You mean public 15 nuisance? 16 MR. KEYES: No, damages report. 17 MR. SOBOL: Okay. 18 THE WITNESS: On the damages 19 report? 20 QUESTIONS BY MR. KEYES: 21 Q. Yeah. 22 I asked you before, what did 23 Greylock McKinnon Associates do to help 24 support your report writing with respect to 25 the damages report.</p>
<p style="text-align: right;">Page 610</p> <p>1 felt bad about it. And then I went back and 2 checked and I said, "Oh, gosh, I forgot 3 Heather." So I just forgot. 4 Q. What did you go back and check? 5 A. E-mails. 6 Q. E-mails with Compass Lexecon? 7 A. Yeah. Yes. 8 Q. Okay. Did anyone else help you 9 on your damages report besides the people 10 you've now mentioned: Mr. Cider, 11 Ms. Kaminski, Mr. McKay, Ms. Spang? 12 A. Erica Benton. 13 Q. And Ms. Benton. 14 Anyone else? 15 A. Not that I know of. There may 16 have been other staff that they used, but I 17 don't know. 18 Q. Okay. And you mentioned a 19 second firm. 20 Can you spell that for the 21 court reporter? 22 A. Yeah, it's -- the first name is 23 Greylock, G-r-e-y-l-o-c-k, and it's one word, 24 and then McKinnon, M-a-c-K i-n-n-o-n {sic}, 25 Associates.</p>	<p style="text-align: right;">Page 612</p> <p>1 A. Oh, okay. 2 MR. SOBOL: We both flipped out 3 on that. 4 THE WITNESS: Yeah, sorry. 5 QUESTIONS BY MR. KEYES: 6 Q. Did Greylock McKinnon 7 Associates help you on the damages report? 8 A. Much less. There may have been 9 some -- 10 Q. Much less than Compass Lexecon 11 did -- 12 A. Yes. 13 Q. -- on the -- 14 A. The damages report was 15 primarily Compass Lexecon. 16 Q. So I'm asking: What did 17 Greylock McKinnon Associates do to help you 18 on the damages report? 19 A. Okay. You know, part of what I 20 needed to do in the damages report is 21 understand the reports coming before me, 22 which -- by which I mean the Rosenthal report 23 and the Cutler report. 24 The empirical work in the 25 Rosenthal report was primarily supported by</p>

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<p>1 staff at Greylock McKinnon, and I had</p> <p>2 occasion to speak with that staff who, you</p> <p>3 know, helped me understand these.</p> <p>4 Q. Who were the members of the</p> <p>5 Greylock McKinnon Associates team that helped</p> <p>6 you on the damages report?</p> <p>7 A. The fellow's name is Forrest,</p> <p>8 and then McCluer, M-c-C-l-e-u-r {sic}.</p> <p>9 Q. Did anyone besides Mr. McCluer</p> <p>10 from Greylock McKinnon Associates help you on</p> <p>11 the damages report?</p> <p>12 A. I don't think so.</p> <p>13 Q. What was Greylock McKinnon</p> <p>14 Associates' role on the nuisance report?</p> <p>15 A. There was more individuals</p> <p>16 involved in supporting, but the role was, as</p> <p>17 I described earlier, they would help me with</p> <p>18 information and literature.</p> <p>19 Q. And who are the -- who are the</p> <p>20 specific people at Greylock McKinnon</p> <p>21 Associates who helped you on the nuisance</p> <p>22 report?</p> <p>23 A. Okay. There are three: Renee</p> <p>24 Rushnawitz, and she's one of the owners of</p> <p>25 the firm; and Adrian Gonzalez, who's -- I</p>	<p>1 McKinnon Associates team?</p> <p>2 A. Mostly, yes.</p> <p>3 Q. Did you rely on them to decide</p> <p>4 what to read yourself?</p> <p>5 A. They helped guide me into what</p> <p>6 I should be looking at in more detail.</p> <p>7 Q. So did you rely on them in</p> <p>8 order to do your work on this engagement?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 THE WITNESS: Well, I used them</p> <p>11 in the specific way I just answered.</p> <p>12 They helped guide what I should pay</p> <p>13 more attention to.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. Now, were there times when you</p> <p>16 read their -- what you describe as a written</p> <p>17 indication and just use that and not go to</p> <p>18 the original source?</p> <p>19 A. Not that I can think of.</p> <p>20 Q. Were there times when you got</p> <p>21 the written indication of what the paper said</p> <p>22 and then you actually went to the original</p> <p>23 source and read it?</p> <p>24 A. Many times.</p> <p>25 Q. Every time?</p>
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<p>1 think his title is analyst, probably; and</p> <p>2 then Amanda Kreider, who also is an analyst</p> <p>3 there.</p> <p>4 Q. And how did these three people</p> <p>5 help you specifically on your public nuisance</p> <p>6 report?</p> <p>7 A. They helped me track down</p> <p>8 papers and studies.</p> <p>9 Q. Just get copies of them or read</p> <p>10 them?</p> <p>11 A. Sometimes they read them.</p> <p>12 Q. And did they prepare summaries</p> <p>13 of them for you?</p> <p>14 A. In some cases there were kind</p> <p>15 of an indication of what the papers were</p> <p>16 about, so then it would help me figure out</p> <p>17 where I needed to read more in more detail.</p> <p>18 Q. And are these written</p> <p>19 indications of what certain papers were</p> <p>20 about?</p> <p>21 MR. SOBOL: Just yes or no.</p> <p>22 THE WITNESS: Yes.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. Did you read these written</p> <p>25 indications you got from the Greylock</p>	<p>1 MR. SOBOL: Objection.</p> <p>2 THE WITNESS: I don't know if I</p> <p>3 would have sometimes decided something</p> <p>4 was in one of their outlines that I --</p> <p>5 for whatever reason I decided, no, I'm</p> <p>6 not going to look at that. I don't</p> <p>7 know. That probably happened.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. Prior to this engagement, have</p> <p>10 you ever offered an opinion that a public</p> <p>11 nuisance existed?</p> <p>12 A. Not in any legal sense.</p> <p>13 Q. In any case?</p> <p>14 A. In any legal -- in some</p> <p>15 litigation context?</p> <p>16 Q. Yeah.</p> <p>17 A. No, this is my first public</p> <p>18 nuisance report.</p> <p>19 Q. And prior to this engagement,</p> <p>20 have you ever offered opinions about the</p> <p>21 magnitude of harms or costs associated with</p> <p>22 the public nuisance?</p> <p>23 A. This is -- you're also asking</p> <p>24 in a litigation context?</p> <p>25 Q. Yes.</p>

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<p style="text-align: right;">Page 617</p> <p>1 A. No, this is my first public 2 nuisance venture. 3 Q. Prior to this engagement, have 4 you ever served as a testifying expert 5 offering opinions regarding a public 6 nuisance? 7 MR. SOBOL: Objection. Asked 8 and answered. 9 THE WITNESS: No, this is my 10 first public nuisance venture. 11 QUESTIONS BY MR. KEYES: 12 Q. Prior to this engagement, has 13 Compass Lexecon ever worked on a case 14 involving whether a public nuisance existed? 15 A. I don't know. 16 Q. Prior to this engagement, has 17 Compass Lexecon ever worked on a case 18 attempting to determine the magnitude of 19 harms or costs associated with the public 20 nuisance? 21 A. I don't know. 22 Q. Prior to this engagement, has 23 Greylock McKinnon Associates ever worked on a 24 case involving whether a public nuisance 25 existed?</p>	<p style="text-align: right;">Page 619</p> <p>1 discuss physicians being influenced by, 2 quote, "Detailing visits by representatives 3 of brand drug companies and other promotional 4 activities by drug companies." 5 Do you see that? 6 A. I see it. 7 Q. Have you studied detailing 8 visits by manufacturing defendants to 9 physicians? 10 A. Well, I've studied in a sense 11 of reading about it as part of my 12 professional -- 13 Q. Reading about them? 14 A. Yes, that's what I said. 15 Q. Okay. Have you done any 16 independent study yourself? 17 MR. SOBOL: Objection. 18 QUESTIONS BY MR. KEYES: 19 Q. Of detailing visits? 20 MR. SOBOL: Objection. 21 THE WITNESS: Okay. Well, I -- 22 in sort of a general term, that's an 23 independent study. It's me. It's 24 reading. That's a kind of study. 25 What I haven't done is</p>
<p style="text-align: right;">Page 618</p> <p>1 A. I don't know. 2 Q. Prior to this engagement, has 3 Greylock McKinnon Associates ever worked on a 4 case attempting to determine the magnitude of 5 harms or costs associated with the public 6 nuisance? 7 A. I don't know. 8 Q. In paragraph 21 of your report 9 on public nuisance -- 10 Are you there? 11 A. Yes, I'm here. 12 Q. -- you discuss physicians being 13 influenced by, quote, "Detailing visits by 14 representatives of brand drug companies and 15 other promotional activities by drug 16 companies." 17 A. Excuse me, I think I must be on 18 the wrong page. 19 Can you give me another -- 20 Q. Paragraph 21. 21 A. Paragraph 21. Okay. 22 Okay. 23 Q. Are you there? 24 A. Yes. 25 Q. Okay. In paragraph 21 you</p>	<p style="text-align: right;">Page 620</p> <p>1 independently assessed the empirical 2 connection between detailing visits 3 and sales or shipments. 4 QUESTIONS BY MR. KEYES: 5 Q. You say in paragraph 21, quote, 6 "In the context of prescription opioids, 7 manufacturers were purveying biased 8 information." 9 A. I'm sorry, you've lost me 10 again. 11 Q. You say in paragraph 21, "In 12 the context of prescription opioids" -- 13 MR. SOBOL: It's third line 14 down. 15 THE WITNESS: Okay. Okay. 16 QUESTIONS BY MR. KEYES: 17 Q. Okay. Have you studied what 18 false information was disseminated by 19 manufacturers to physicians? 20 A. Well, I'm relying on other 21 experts for making that determination. 22 Q. Who? 23 A. Well, as it says in the very 24 next sentence there, "As explained in the 25 expert report of Matthew Perri."</p>

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<p>1 Q. Anyone else?</p> <p>2 A. It's also covered in some</p> <p>3 Kessler stuff and Dr. Parran stuff.</p> <p>4 Q. Have you studied what false</p> <p>5 information was disseminated by manufacturers</p> <p>6 to patients?</p> <p>7 MR. SOBOL: Objection. Form.</p> <p>8 You may answer.</p> <p>9 THE WITNESS: Well, again, I</p> <p>10 rely on the reports of these other</p> <p>11 experts for that.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. You're relying on the same</p> <p>14 experts you just mentioned?</p> <p>15 A. Yes.</p> <p>16 Q. Have you studied what false</p> <p>17 information was disseminated by manufacturers</p> <p>18 to consumers?</p> <p>19 A. I'd be relying on the same</p> <p>20 experts for that.</p> <p>21 Q. Have you studied what, quote,</p> <p>22 "systematically and intentionally</p> <p>23 misleading," quote, information was</p> <p>24 disseminated by manufacturers to physicians?</p> <p>25 A. Is that a quote from me?</p>	<p>1 physicians?</p> <p>2 A. Well, on -- in this -- on</p> <p>3 this -- for this statement I also rely on</p> <p>4 Dr. Perri, as the footnote indicates.</p> <p>5 Q. Have you studied what, quote,</p> <p>6 "systematically and intentionally</p> <p>7 misleading," end quote, information was</p> <p>8 disseminated by manufacturers to patients?</p> <p>9 A. The same. I have -- I rely on</p> <p>10 these three other experts for this material.</p> <p>11 Q. Have you studied what, quote,</p> <p>12 "systematically and intentionally</p> <p>13 misleading," end quote, information was</p> <p>14 disseminated by manufacturers to consumers?</p> <p>15 A. In the same way, this is</p> <p>16 something I rely on the three experts in my</p> <p>17 report.</p> <p>18 Q. Will you turn to page 6 of your</p> <p>19 report?</p> <p>20 Are you there?</p> <p>21 A. I'm there, yeah.</p> <p>22 Q. In paragraph 10 you say, "I</p> <p>23 will use the term 'defendants' shipments of</p> <p>24 prescription opioids,' or sometimes just</p> <p>25 'shipments,' as a shorthand for the activity</p>
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<p>1 Q. Yes. You used the phrase</p> <p>2 "systematically and intentionally</p> <p>3 misleading."</p> <p>4 A. And where might I find that</p> <p>5 phrase?</p> <p>6 Q. Do you recall using that phrase</p> <p>7 in your own report?</p> <p>8 A. It rings a bell, but I want</p> <p>9 to -- I'd like to see where you're talking</p> <p>10 about.</p> <p>11 Q. Do you see the sentence that I</p> <p>12 read you a moment ago about purveying biased</p> <p>13 information?</p> <p>14 A. Yes.</p> <p>15 Q. The very next sentence refers</p> <p>16 to "The information doctors were being given</p> <p>17 about the dangers of prescription opioids was</p> <p>18 in most cases false and systematically and</p> <p>19 intentionally misleading."</p> <p>20 Do you see that?</p> <p>21 A. I do, yes.</p> <p>22 Q. Okay. So have you studied</p> <p>23 what, quote, "systematically and</p> <p>24 intentionally misleading," quote, information</p> <p>25 was disseminated by manufacturers to</p>	<p>1 the bellwether plaintiffs claim constitutes a</p> <p>2 public nuisance regarding both the marketing</p> <p>3 and distribution of prescription opioids by</p> <p>4 defendants."</p> <p>5 Do you see that?</p> <p>6 A. I do see that, yes.</p> <p>7 Q. And when you refer to "the</p> <p>8 bellwether plaintiffs" here, you're referring</p> <p>9 to Summit County and Cuyahoga County,</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And only those two counties,</p> <p>13 correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And when you refer to the</p> <p>16 bellwether plaintiffs elsewhere in this</p> <p>17 report, again, you're referring to Summit</p> <p>18 County and Cuyahoga County, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And only those two counties?</p> <p>21 A. That's correct.</p> <p>22 Q. And so is it accurate based on</p> <p>23 this statement to say that every time you</p> <p>24 refer to, quote, "shipments," you are</p> <p>25 referring to all of the marketing of</p>

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<p>1 prescription opioids by all of the defendants 2 and all of the distribution of prescription 3 opioids by all the defendants? 4 A. Can you ask me again? I'm 5 sorry. 6 Q. Yeah. 7 A. I have -- 8 Q. I just showed you the language 9 in paragraph 10. 10 A. Yeah. 11 Q. I want to confirm: Is it 12 accurate based on paragraph 10 to say that 13 every time you refer to, quote, "shipments," 14 end quote, you're referring to all of the 15 marketing of prescription opioids by all of 16 the defendants and all of the distribution of 17 prescription opioids by all of the 18 defendants? 19 A. Well, if by "marketing" you 20 mean "sales," then I think that's correct. 21 Q. Would you turn to page 9 of 22 your report? 23 A. Okay. 24 Q. Are you there? 25 A. I'm there.</p>	<p>1 Do you see that language? 2 A. I see that, yes. 3 Q. And when you offer that 4 opinion, referring to a public nuisance, you 5 are using the definition that you provided in 6 paragraph 16 on page 9, correct? 7 MR. SOBOL: Objection. 8 THE WITNESS: Well, I wouldn't 9 call this a definition. 10 QUESTIONS BY MR. KEYES: 11 Q. What would you call it? 12 A. It's a statement. 13 Q. Okay. 14 A. I'm not sure -- it doesn't say 15 definition. It doesn't mean to be an 16 if-and-only-if statement. 17 Q. Well, when you are talking in 18 this report about a public nuisance in 19 economic terms, are you using some different 20 standard for public nuisance than what you 21 describe here? 22 A. Well, this -- 23 Q. Paragraph 16? 24 A. The definition of public 25 nuisance that I'm using is set out here.</p>
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<p>1 Q. Okay. In paragraph 16 you say, 2 "A public nuisance in economic terms is 3 generally observed when an action or set of 4 actions undertaken by a party or group of 5 parties gives rise to overwhelming negative 6 externalities." 7 Do you see that? 8 A. I do, yes. 9 Q. And you use this definition 10 when you opine that a, quote, "public 11 nuisance has resulted from the shipment of 12 prescription opioids into the bellwether 13 communities." 14 A. And where am I reading when I 15 see that? 16 Q. Well, that's on page 7, 17 paragraph 14. 18 A. Okay. So far so good. 19 Q. Okay. So do you see that your 20 reference to "I am of the opinion, to a 21 reasonable degree of certainty in the area of 22 applied microeconomics, that a public 23 nuisance has resulted from the shipment of 24 prescription opioid products into the 25 bellwether communities"?</p>	<p>1 It's probably -- a little bit earlier. It 2 was given to me by counsel. That's contained 3 in paragraph 7, which I then interpreted for 4 my purposes as containing three components. 5 And if you ask me for a definition, that's 6 what I would give you. 7 Q. Okay. So you're using the 8 legal definition that you say was provided to 9 you by plaintiffs' counsel as set forth in 10 paragraph 7? 11 MR. SOBOL: Objection. 12 Mischaracterizes his testimony. 13 THE WITNESS: Well, this is -- 14 I was instructed to be guided by this 15 definition, which I was. And then in 16 order to evaluate whether a public 17 nuisance existed, I used that 18 definition to identify three things 19 that I should study, and the three 20 things are on page 21. 21 QUESTIONS BY MR. KEYES: 22 Q. Right. 23 So, Professor McGuire, when you 24 are offering the opinion that there is a 25 public nuisance, are you using the definition</p>

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<p>1 provided by counsel in paragraph 7, or are</p> <p>2 you using what you say is a public nuisance</p> <p>3 in economic terms as described in</p> <p>4 paragraph 16?</p> <p>5 MR. SOBOL: Objection. Form.</p> <p>6 THE WITNESS: See, I wouldn't</p> <p>7 put it that way. I was guided by the</p> <p>8 legal instruction. Paragraph 38 uses</p> <p>9 the word "definition." So this is</p> <p>10 what I would point you to in terms of</p> <p>11 where it's defined. I consider the</p> <p>12 elements of a definition, so this is</p> <p>13 where the definition takes place.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. So when you offer the opinion</p> <p>16 that there was a public nuisance, are you</p> <p>17 using the definition in paragraph 38, or are</p> <p>18 you using what you describe as a public</p> <p>19 nuisance in economic terms as set forth in</p> <p>20 paragraph 16?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 Mischaracterizes.</p> <p>23 THE WITNESS: This is the --</p> <p>24 paragraph 38 uses the word</p> <p>25 "definition." So this is where I</p>	<p>1 not what the sentence says.</p> <p>2 MR. KEYES: I already read what</p> <p>3 the sentence says.</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. Do you disagree with the</p> <p>6 concept that a public nuisance gives rise to</p> <p>7 overwhelming negative externalities?</p> <p>8 A. The entire sentence says, "A</p> <p>9 public nuisance in economic terms is</p> <p>10 generally observed when an action undertaken</p> <p>11 by a party or a group of parties gives rise</p> <p>12 to an overwhelming negative externality."</p> <p>13 Q. So in economic terms, does a</p> <p>14 public nuisance gives rise to overwhelming</p> <p>15 negative externalities?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 Mischaracterizes his testimony.</p> <p>18 MR. KEYES: I'm not</p> <p>19 characterizing anything. I'm asking</p> <p>20 him a question.</p> <p>21 MR. SOBOL: Well, leave your</p> <p>22 words out of it.</p> <p>23 MR. KEYES: You're the</p> <p>24 economist.</p> <p>25 MR. SOBOL: Leave your words</p>
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<p>1 define what I'm -- definition --</p> <p>2 definition of a public nuisance.</p> <p>3 There it is. And this is what I do in</p> <p>4 my report.</p> <p>5 QUESTIONS BY MR. KEYES:</p> <p>6 Q. Okay. And going back to</p> <p>7 paragraph 16 of your report --</p> <p>8 A. Okay.</p> <p>9 Q. -- where you describe what a</p> <p>10 public nuisance is in economic terms, do you</p> <p>11 see that language?</p> <p>12 A. I do.</p> <p>13 Q. Okay. And you describe it as</p> <p>14 something that gives rise to overwhelming</p> <p>15 negative externalities?</p> <p>16 MR. SOBOL: Objection. That's</p> <p>17 not the whole sentence.</p> <p>18 THE WITNESS: Well, the</p> <p>19 sentence is what I say, but I'm sure</p> <p>20 you have a question in mind.</p> <p>21 QUESTIONS BY MR. KEYES:</p> <p>22 Q. You say, "A public nuisance</p> <p>23 gives rise to overwhelming negative</p> <p>24 externalities."</p> <p>25 MR. SOBOL: Objection. That's</p>	<p>1 out of it.</p> <p>2 MR. KEYES: You're the</p> <p>3 economist.</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. So in economic terms, does a</p> <p>6 public nuisance give rise to overwhelming</p> <p>7 negative externalities?</p> <p>8 MR. SOBOL: Objection.</p> <p>9 Mischaracterizes his testimony.</p> <p>10 THE WITNESS: Generally</p> <p>11 observed, when an action -- well, I</p> <p>12 don't know if there's any point in</p> <p>13 reading the sentence, which we've done</p> <p>14 already, but you're changing the</p> <p>15 meaning.</p> <p>16 QUESTIONS BY MR. KEYES:</p> <p>17 Q. Does an action -- in economic</p> <p>18 terms, does an action have an externality</p> <p>19 even if it harms or imposes costs on just one</p> <p>20 other person?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 THE WITNESS: Let me see if I</p> <p>23 follow.</p> <p>24 Now we're -- you're not using</p> <p>25 the word "public nuisance" in that</p>

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<p style="text-align: right;">Page 633</p> <p>1 question. You're asking a question</p> <p>2 about whether an externality in</p> <p>3 economic terms can fall on just one</p> <p>4 other person?</p> <p>5 QUESTIONS BY MR. KEYES:</p> <p>6 Q. Yes.</p> <p>7 A. The answer to that is yes.</p> <p>8 Q. Okay. In economic terms, does</p> <p>9 an action have an externality even if it does</p> <p>10 not interfere with individuals in their</p> <p>11 exercise of public rights?</p> <p>12 MR. SOBOL: Objection. Form.</p> <p>13 THE WITNESS: Trying to make</p> <p>14 sure I...</p> <p>15 Does an action have an</p> <p>16 externality even if it does not</p> <p>17 interfere with exercise of public</p> <p>18 rights?</p> <p>19 So the answer to that question</p> <p>20 is that, yes, an externality can</p> <p>21 involve some other form of negative</p> <p>22 effect on a second party that could</p> <p>23 take different forms.</p> <p>24 So I'm not sure whether it's</p> <p>25 yes or no, but that's the way I would</p>	<p style="text-align: right;">Page 635</p> <p>1 know?</p> <p>2 Look at the -- look at</p> <p>3 paragraph 16 and tell me whether it says</p> <p>4 anything about interfering with public</p> <p>5 rights.</p> <p>6 MR. SOBOL: Objection.</p> <p>7 THE WITNESS: Well, you</p> <p>8 wouldn't need to ask that question if</p> <p>9 you looked at paragraph 16.</p> <p>10 No, it doesn't.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Okay. It refers to giving rise</p> <p>13 to overwhelming negative externalities.</p> <p>14 What are the criteria in the</p> <p>15 field of economics for determining whether</p> <p>16 negative externalities are, quote,</p> <p>17 "overwhelming," end quote?</p> <p>18 A. Well, there's no, I would say,</p> <p>19 hard-and-fast definition of what overwhelming</p> <p>20 means. I guess, you know, it means very</p> <p>21 large.</p> <p>22 And where I do get around to</p> <p>23 defining what a public nuisance is, in</p> <p>24 paragraph 38 I use words that are, you know,</p> <p>25 similar: "continuing, long-lasting effects"</p>
<p style="text-align: right;">Page 634</p> <p>1 put it.</p> <p>2 QUESTIONS BY MR. KEYES:</p> <p>3 Q. Well, when you describe a</p> <p>4 public nuisance in paragraph 16, in economic</p> <p>5 terms, you say, "When an action or set of</p> <p>6 actions undertaken by a party or group of</p> <p>7 parties gives rise to overwhelming negative</p> <p>8 externalities," correct?</p> <p>9 MR. SOBOL: Objection. That</p> <p>10 mischaracterizes the testimony, and</p> <p>11 it's been asked and answered about</p> <p>12 four times.</p> <p>13 I don't know what you don't</p> <p>14 like about the word "generally."</p> <p>15 THE WITNESS: Well, that's the</p> <p>16 sentence I say, but -- so I'm not sure</p> <p>17 what the question is then.</p> <p>18 QUESTIONS BY MR. KEYES:</p> <p>19 Q. And when you give that sentence</p> <p>20 where you're describing a public nuisance in</p> <p>21 economic terms, it says nothing about</p> <p>22 interfering with a public right, correct?</p> <p>23 A. Well, I don't know. It says</p> <p>24 what it says here.</p> <p>25 Q. What do you mean you don't</p>	<p style="text-align: right;">Page 636</p> <p>1 and "significantly interfere."</p> <p>2 That's what I was asked to</p> <p>3 assess, and when the numbers run into the</p> <p>4 billions for two counties, it satisfies my</p> <p>5 definition of what overwhelming is.</p> <p>6 Q. I didn't ask about</p> <p>7 paragraph 38. I asked about the language you</p> <p>8 used in paragraph 16.</p> <p>9 In paragraph 16 in your report</p> <p>10 that you say you wrote, you say, "A public</p> <p>11 nuisance gives rise to overwhelming negative</p> <p>12 externalities."</p> <p>13 My question is: What are the</p> <p>14 criteria in the field of economics for</p> <p>15 determining whether negative externalities</p> <p>16 are, quote, "overwhelming"?</p> <p>17 MR. SOBOL: Okay. First, I</p> <p>18 object --</p> <p>19 QUESTIONS BY MR. KEYES:</p> <p>20 Q. And you said, "very large."</p> <p>21 Can you be more specific about</p> <p>22 the criteria in the field of economics for</p> <p>23 determining what, quote, "overwhelming"</p> <p>24 means?</p> <p>25 MR. SOBOL: Well, first, I</p>

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<p>1 object to the speech beforehand. I</p> <p>2 don't know whether or not you're</p> <p>3 asking the witness to adopt the speech</p> <p>4 or not.</p> <p>5 But I take it that what you are</p> <p>6 asking is the end question alone,</p> <p>7 which is, can you be more specific</p> <p>8 about the criteria in the field of</p> <p>9 economics for determining what</p> <p>10 overwhelming means.</p> <p>11 THE WITNESS: Well, I think I</p> <p>12 interpret this question as another</p> <p>13 version of the question I had earlier,</p> <p>14 and as I said there, the term</p> <p>15 "overwhelming" is one that doesn't</p> <p>16 have a bright-line criteria of what is</p> <p>17 overwhelming and not overwhelming. It</p> <p>18 depends on the context.</p> <p>19 What is significant, that's</p> <p>20 where large is.</p> <p>21 Continuing, that has to deal</p> <p>22 with time.</p> <p>23 Long-lasting, that has to deal</p> <p>24 with how long negative effects</p> <p>25 persist. And that was the charge I</p>	<p>1 A. Yeah, or -- well, I have a</p> <p>2 criteria for what unreasonable means, which</p> <p>3 is that -- what do I say here?</p> <p>4 Q. Well, are you able to tell me</p> <p>5 without looking at your report?</p> <p>6 A. It helps me to be more specific</p> <p>7 to look at the report, and it's right here,</p> <p>8 so it won't take much time.</p> <p>9 So it's not, I wouldn't say,</p> <p>10 number. It's the shipments were unreasonable</p> <p>11 if they're not justified by clinical need.</p> <p>12 And it wasn't really a count that I looked</p> <p>13 at. I looked at more of a share.</p> <p>14 Q. Okay. I want to be clear that</p> <p>15 I understand the logic.</p> <p>16 You say the interference from</p> <p>17 shipments was unreasonable, right?</p> <p>18 A. Yes.</p> <p>19 Q. And you're talking about the</p> <p>20 interference with a public right, correct?</p> <p>21 A. Well, I'm talking about exactly</p> <p>22 what I said earlier, with interference with</p> <p>23 applicable health and safety.</p> <p>24 Q. And you're saying that that</p> <p>25 interference with those things was</p>
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<p>1 had here in order to evaluate that.</p> <p>2 And when you say Table 1, I</p> <p>3 thought, okay, yes, \$20 billion in two</p> <p>4 counties due to shipments, that meets</p> <p>5 my criteria.</p> <p>6 QUESTIONS BY MR. KEYES:</p> <p>7 Q. Can you point me to any sources</p> <p>8 that you would rely on for identifying the</p> <p>9 criteria for determining whether a negative</p> <p>10 externality is overwhelming?</p> <p>11 A. I don't have anything more than</p> <p>12 I told you in answer to the last question.</p> <p>13 Q. Okay. Would you turn to</p> <p>14 page 37?</p> <p>15 A. Okay.</p> <p>16 Q. You have a section titled "The</p> <p>17 Interference from Shipments was</p> <p>18 Unreasonable."</p> <p>19 Do you see that?</p> <p>20 A. I do, yeah.</p> <p>21 Q. Now, in offering your opinion</p> <p>22 that the interference with shipments was</p> <p>23 unreasonable, you offer the opinion that the</p> <p>24 number of shipments was unreasonable,</p> <p>25 correct?</p>	<p>1 unreasonable because the volume of shipments</p> <p>2 was unreasonable --</p> <p>3 MR. SOBOL: Objection.</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. -- right?</p> <p>6 MR. SOBOL: Objection.</p> <p>7 THE WITNESS: That's close.</p> <p>8 It's not exactly what I was doing.</p> <p>9 But I have a definition of</p> <p>10 unreasonable laid out in paragraph 62</p> <p>11 on instruction from counsel --</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. Right, but that --</p> <p>14 A. -- and -- excuse me one sec.</p> <p>15 I attempted to evaluate whether</p> <p>16 that was satisfied by the large majority of</p> <p>17 shipments.</p> <p>18 Q. To determine whether the</p> <p>19 shipments were reasonable or not, using the</p> <p>20 definition that you just described, which is</p> <p>21 not justified by a clinical need?</p> <p>22 A. I think that's correct.</p> <p>23 Q. Okay. And you were instructed</p> <p>24 by counsel to assume that unreasonable is, in</p> <p>25 substance, not justified by clinical need,</p>

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<p>1 correct?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 THE WITNESS: Basically</p> <p>4 correct, yes.</p> <p>5 QUESTIONS BY MR. KEYES:</p> <p>6 Q. Okay. And then you opine that</p> <p>7 shipments were unreasonable in this case</p> <p>8 because most shipments were not used for</p> <p>9 clinically justified treatment, correct?</p> <p>10 A. The large majority of shipments</p> <p>11 were not used for scientifically, yes,</p> <p>12 acceptable, yes, treatment.</p> <p>13 Q. Did you do any independent</p> <p>14 examination of which shipments were used for</p> <p>15 clinically justified treatment and which were</p> <p>16 not?</p> <p>17 A. By which you mean in a</p> <p>18 particular year in a particular county of all</p> <p>19 the shipments, to sort them into two buckets?</p> <p>20 Q. Yes.</p> <p>21 A. No, I didn't do that.</p> <p>22 Q. Who did that?</p> <p>23 A. You mean classify or do you</p> <p>24 mean -- I'm lost about -- excuse me. Go</p> <p>25 ahead. Ask a question.</p>	<p>1 not do was examine, you know, particular --</p> <p>2 MR. SOBOL: John Doe.</p> <p>3 THE WITNESS: -- shipments to a</p> <p>4 particular patient or through a</p> <p>5 particular distributor or through a</p> <p>6 particular drugstore, but it was to</p> <p>7 identify in a time period and a</p> <p>8 location what share of the total</p> <p>9 shipments could have been attributed</p> <p>10 to appropriate clinical treatment.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. What test did she use for that?</p> <p>13 A. She relied on -- primarily on</p> <p>14 expertise of some of the medical experts.</p> <p>15 Q. Who?</p> <p>16 A. Primarily on Schumacher and</p> <p>17 Dr. Parran.</p> <p>18 Q. Did you examine which shipments</p> <p>19 for a particular time period in a particular</p> <p>20 location could be attributed to appropriate</p> <p>21 clinical treatment?</p> <p>22 A. Well, again, the which in the</p> <p>23 sense of which patient, which outlet, I</p> <p>24 didn't examine that, but I, you know, applied</p> <p>25 the estimates from Rosenthal's report about</p>
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<p>1 Q. Who studied which shipments</p> <p>2 were used for clinically justified treatment?</p> <p>3 A. What I rely on and what I</p> <p>4 understand about this, in the sense in</p> <p>5 which -- there's a which here -- is there's a</p> <p>6 count of opioid shipments that -- this comes</p> <p>7 from the Rosenthal report -- in kind of</p> <p>8 theoretical maximum could have been used for</p> <p>9 appropriate medical treatment. That's -- the</p> <p>10 result of that is a kind of share. It's</p> <p>11 not as I -- I think I misunderstood the</p> <p>12 first -- when -- the time you asked the</p> <p>13 question.</p> <p>14 It's not saying this shipment</p> <p>15 yes; this shipment no. It was looking at of</p> <p>16 all the shipments, how many of them could</p> <p>17 have been justified by clinical criteria.</p> <p>18 Q. Well, did Professor Rosenthal</p> <p>19 look at particular shipments to determine</p> <p>20 whether they were justified -- clinically</p> <p>21 justified treatment?</p> <p>22 A. This is where I make sure I'm</p> <p>23 not confused again here.</p> <p>24 By particular shipments,</p> <p>25 what -- my understanding is that what she did</p>	<p>1 the share of the total that could be put in</p> <p>2 the clinically acceptable/not clinically</p> <p>3 acceptable categories.</p> <p>4 Q. Okay. So are you relying on</p> <p>5 Professor Rosenthal then to determine which</p> <p>6 shipments are for clinically acceptable</p> <p>7 treatment and which ones are not?</p> <p>8 A. Well, two nos there. Two nos</p> <p>9 to this question.</p> <p>10 It's which share, if you</p> <p>11 would -- if you were to substitute which</p> <p>12 share of shipments, then I would -- that</p> <p>13 would be the kind of thing I investigated.</p> <p>14 And it's not only on Professor Rosenthal.</p> <p>15 There's other material that supports that.</p> <p>16 Q. Okay. Well, I just want to</p> <p>17 make sure I understand.</p> <p>18 You say that counsel instructed</p> <p>19 you to use not justified by clinical need as</p> <p>20 the standard for unreasonable, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And you did not independently</p> <p>23 examine the extent to which shipments were or</p> <p>24 were not justified by clinical need, correct?</p> <p>25 A. Well, I took the same</p>

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<p>1 percentages and the same other inputs that go 2 into that calculation. I used Professor 3 Rosenthal's numbers for those. 4 Q. Right. 5 So you're relying on Professor 6 Rosenthal's numbers -- 7 A. One sec, though. 8 What I did, read the backup 9 that she used, and I did, you know, study the 10 other parts of the Cutler and Gruber report 11 that also support that analysis. 12 Q. Did you independently test 13 Professor Rosenthal's work or conclusions 14 about the share of shipments that were not 15 justified by clinical need? 16 A. Well, in the sense of checking 17 it against the other evidence in the case, 18 such as the clinical opinions and the work by 19 Gruber and Cutler. 20 Q. Have you done your own study of 21 the share of prescriptions that are 22 clinically appropriate? 23 A. Well, what I did is in the 24 report, and I used Professor Rosenthal's 25 estimates in order to apply them to the</p>	<p>1 QUESTIONS BY MR. KEYES: 2 Q. -- as to which share of 3 shipments were for clinically justified 4 treatment? 5 MR. SOBOL: Objection. 6 You may answer. 7 THE WITNESS: No. 8 QUESTIONS BY MR. KEYES: 9 Q. Why not? 10 A. Well, my opinion about this 11 has, I think, a pretty good basis, and it 12 doesn't depend on a -- you know, a single 13 aspect of the situation. 14 I would say in summary that the 15 weight of clinical evidence is that, in fact, 16 there's no studies that I'm aware of that 17 demonstrate that opioids are effective for 18 long-term clinical pain. 19 Q. What is the FDA -- 20 MR. SOBOL: He hasn't finished 21 his answer. 22 THE WITNESS: So that's -- so 23 that's one. 24 You see that in the CDC, and 25 you see that in the medical experts as</p>
Page 646	Page 648
<p>1 bellwether counties. 2 Q. And what is -- what standard 3 did Professor Rosenthal use to determine 4 which shares of shipments were clinically 5 justified treatment? 6 A. She relied on medical experts 7 for that. 8 Q. Which experts? 9 A. Schumacher and Parran, I 10 believe. 11 Q. Okay. And does Professor 12 Rosenthal take a position in running those 13 calculations on whether prescription opioids 14 are a clinically appropriate use for chronic 15 pain? 16 A. I would have to go back and see 17 exactly what she said about that. She has a 18 qualifier in there, but she did not include 19 any estimates of chronic pain in her 20 clinically appropriate categories. 21 Q. If people do obtain pain relief 22 from chronic pain when they use prescription 23 opioids, would that change your opinion -- 24 MR. SOBOL: Objection. 25</p>	<p>1 well. That's number one. 2 Number two is the CDC and the 3 medical experts and other papers say 4 these are dangerous drugs. That's 5 number two. 6 And number three, in almost all 7 cases, opioids are a third-line 8 treatment for long-term chronic pain. 9 Just one -- I'm wrapping up 10 here. 11 So you put those statements 12 together, and they provide a strong 13 basis for saying that the share of 14 appropriate treatments in the chronic 15 pain category is going to be really 16 small. 17 QUESTIONS BY MR. KEYES: 18 Q. What does the FDA say about 19 whether prescription opioids can be used for 20 chronic pain? 21 MR. SOBOL: Objection. 22 THE WITNESS: I'm not sure. 23 QUESTIONS BY MR. KEYES: 24 Q. Did you look into that? 25 A. Well, for that sort of thing is</p>

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<p>1 what I rely on medical experts for, to read 2 labels and tell me what is the appropriate 3 and not appropriate categories. 4 Q. Does Medicare cover 5 prescription opioids? 6 MR. SOBOL: Objection. 7 THE WITNESS: Yes, I think they 8 do. 9 QUESTIONS BY MR. KEYES: 10 Q. Does Medicare cover 11 prescription opioids for chronic pain? 12 MR. SOBOL: Objection. 13 THE WITNESS: Well, normally 14 when you write a prescription as a 15 doctor, you don't even put the 16 diagnosis down. So the prescription 17 would go through the system, as it 18 were, without a diagnosis. 19 QUESTIONS BY MR. KEYES: 20 Q. Does Medicare cover 21 prescription opioids that are specifically 22 prescribed for chronic pain? 23 MR. SOBOL: Objection. 24 THE WITNESS: Well, Medicare 25 wouldn't know. They don't get a</p>	<p>1 MR. SOBOL: Objection. Asked 2 and answered. 3 THE WITNESS: I'm not sure. 4 QUESTIONS BY MR. KEYES: 5 Q. Did you look into that? 6 A. That's also something that I -- 7 that's obviously a clinical question of what 8 is the appropriate use of opioids, and that's 9 something that there are other experts who 10 will be in a good position to talk about. 11 Q. Has Medicaid made a 12 determination as to whether it will cover 13 prescriptions for opioids that are expressly 14 for the purpose of treating chronic pain? 15 MR. SOBOL: Objection. 16 THE WITNESS: Well, Medicaid is 17 in the same position as Medicare when 18 it comes to what information it knows 19 as a claim comes in for a 20 prescription. 21 So if a physician in Medicaid 22 were to prescribe opioids totally 23 inappropriately, Medicaid wouldn't 24 know that. 25 So they're not in a position to</p>
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<p>1 diagnosis on a claim form. 2 QUESTIONS BY MR. KEYES: 3 Q. Well, you can say that. That's 4 not my question. 5 My question was: Does Medicare 6 cover prescription opioids that are 7 specifically prescribed for chronic pain? 8 MR. SOBOL: Objection. Asked 9 and answered. 10 THE WITNESS: Let me try to 11 answer it another way. 12 If a physician were to 13 prescribe a prescription opioid for a 14 stomach upset or for a sore foot, that 15 physician could write that 16 prescription and it would be filled at 17 the pharmacy. Medicare does not know 18 what the particular indication is that 19 the doctor is prescribing that opioid 20 for. 21 QUESTIONS BY MR. KEYES: 22 Q. Has Medicare made a 23 determination as to whether it will cover 24 prescriptions for opioids that are expressly 25 for the purpose of treating chronic pain?</p>	<p>1 make a determination claim by claim 2 what is being -- the use of the opioid 3 is for. 4 QUESTIONS BY MR. KEYES: 5 Q. My question was: Has Medicaid 6 made a decision to cover opioids that are 7 written expressly for the purpose of treating 8 chronic pain? 9 MR. SOBOL: Objection. Asked 10 and answered. 11 THE WITNESS: I was answering 12 that question in the context of a 13 particular prescription and pointing 14 out that Medicaid, which -- are we 15 talking about in the abstract, is not 16 in a position to make that 17 determination claim by claim. 18 Medicaid is not just one thing 19 in the United States. There are 50 20 flavors, depending on the state, and 21 even in the state there are different 22 plans that participate in Medicaid, 23 that have formularies that they 24 determine on their own. 25 So it's --</p>

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<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Have you looked at the</p> <p>3 formularies for any Medicaid or Medicare</p> <p>4 plan?</p> <p>5 A. As part of this, no. That's</p> <p>6 also the -- within the clinical realm of</p> <p>7 determining what is the appropriate use of</p> <p>8 opioids.</p> <p>9 Q. Have any private insurers made</p> <p>10 a decision to cover opioids that are written</p> <p>11 expressly for the purpose of treating chronic</p> <p>12 pain?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 THE WITNESS: You know, it's</p> <p>15 not so different for the private</p> <p>16 insurers either. A claim comes in;</p> <p>17 they don't have a diagnosis on the</p> <p>18 claim. So it's -- they're not in a</p> <p>19 position on a claim-by-claim basis to</p> <p>20 make a determination of whether the</p> <p>21 use of the opioid is appropriate or</p> <p>22 inappropriate.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. My question was: Have any</p> <p>25 private insurers made a decision to cover</p>	<p>1 problem, correct?</p> <p>2 A. That's generally correct, yes.</p> <p>3 Q. Okay. Do you understand that</p> <p>4 individuals in these communities are not</p> <p>5 parties to this lawsuit?</p> <p>6 A. Well, my understanding is the</p> <p>7 plaintiffs are the county governments.</p> <p>8 Q. Okay. So do you understand</p> <p>9 that individuals in Summit County and</p> <p>10 Cuyahoga County are not parties to this</p> <p>11 lawsuit?</p> <p>12 A. Well, I understand the</p> <p>13 plaintiffs to be the two county governments.</p> <p>14 Q. And not individuals?</p> <p>15 MR. SOBOL: Objection. Asked</p> <p>16 and answered.</p> <p>17 THE WITNESS: And, yes, in that</p> <p>18 those are the plaintiffs, period.</p> <p>19 QUESTIONS BY MR. KEYES:</p> <p>20 Q. Okay. And do you understand</p> <p>21 that the communities in the Summit County and</p> <p>22 Cuyahoga County are not parties to this</p> <p>23 lawsuit?</p> <p>24 MR. SOBOL: Objection. Form.</p> <p>25 THE WITNESS: In the same way,</p>
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<p>1 opioids that are written expressly for the</p> <p>2 purpose of treating chronic pain?</p> <p>3 MR. SOBOL: Objection. Asked</p> <p>4 and answered.</p> <p>5 THE WITNESS: Well, it's not</p> <p>6 possible on a claim-by-claim basis.</p> <p>7 And then, you know, we have many</p> <p>8 private insurers in the United States,</p> <p>9 so I'm really not in a position to</p> <p>10 answer.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Have you looked at the</p> <p>13 formulary for any private insurer as to</p> <p>14 whether it covers prescription opioids for</p> <p>15 chronic pain?</p> <p>16 A. Now, this is the realm of the</p> <p>17 P & T committee at the health plan, which is</p> <p>18 a clinically driven decision. And for me as</p> <p>19 an economist, I'm very happy to rely on the</p> <p>20 expert, the medical experts, to tell me about</p> <p>21 this.</p> <p>22 Q. In your report regarding the</p> <p>23 public nuisance, you are attempting to</p> <p>24 quantify costs incurred by communities and</p> <p>25 individuals as a result of the opioid</p>	<p>1 the same answer. I understand the</p> <p>2 plaintiffs to be the two county</p> <p>3 governments, period.</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. So when you attempted to</p> <p>6 quantify the costs in the areas of mortality,</p> <p>7 morbidity, NAS, crime and child maltreatment,</p> <p>8 you are quantifying the costs borne by</p> <p>9 individuals and communities in those areas,</p> <p>10 correct?</p> <p>11 A. They would be borne by a range</p> <p>12 of actors. That would include the</p> <p>13 governments, but also would include</p> <p>14 individuals and other members of the</p> <p>15 community.</p> <p>16 Q. You've done specific</p> <p>17 calculations of the costs borne by Summit</p> <p>18 County and Cuyahoga County, correct?</p> <p>19 A. I've done in my first report,</p> <p>20 or my damages report, I did do specific</p> <p>21 calculations of that, yes, that's correct.</p> <p>22 Q. Right.</p> <p>23 But I'm not asking about the</p> <p>24 damages report now. I'm asking about the</p> <p>25 work you did in the public nuisance report.</p>

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<p>1 A. Okay. I understand.</p> <p>2 Q. Okay. And there, where you are</p> <p>3 quantifying costs in the five areas I listed,</p> <p>4 you were quantifying the costs that are borne</p> <p>5 by individuals or communities other than</p> <p>6 Summit County and Cuyahoga County</p> <p>7 governments?</p> <p>8 A. Well, you know, I wouldn't</p> <p>9 necessarily say that.</p> <p>10 Q. Because?</p> <p>11 MR. SOBOL: Objection.</p> <p>12 THE WITNESS: Because I don't</p> <p>13 think it's true.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. Where have you in your report,</p> <p>16 your public nuisance report, have you</p> <p>17 quantified the costs borne by the Summit</p> <p>18 County or Cuyahoga County governments as a</p> <p>19 result of the public nuisance that you say</p> <p>20 exists?</p> <p>21 A. Where in my report have I</p> <p>22 quantified those things?</p> <p>23 Q. Yes.</p> <p>24 A. The most obvious component of</p> <p>25 costs that I quantify that are borne by the</p>	<p>1 THE WITNESS: I'll focus on the</p> <p>2 question.</p> <p>3 MR. SOBOL: -- the question.</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. You already quantified what you</p> <p>6 said are the costs borne by Summit County and</p> <p>7 Cuyahoga County, and you set forth those</p> <p>8 calculations in your damages report, correct?</p> <p>9 MR. SOBOL: Objection. Asked</p> <p>10 and answered.</p> <p>11 THE WITNESS: Well, the costs</p> <p>12 here are ones due to shipments, not</p> <p>13 due to misconduct.</p> <p>14 So report 1, Exhibit 1,</p> <p>15 damages, assessed costs due to</p> <p>16 misconduct.</p> <p>17 This is a different</p> <p>18 calculation. And all I was answering</p> <p>19 in response to your question was</p> <p>20 clarifying that as a starting point</p> <p>21 for how I -- for the -- you know,</p> <p>22 where these costs would land.</p> <p>23 And that was not a definitional</p> <p>24 statement, it wasn't a repetition what</p> <p>25 I did in the first report. It's an</p>
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<p>1 county governments are in the sixth category</p> <p>2 that I apply, which is an importation from my</p> <p>3 earlier report of the damages associated with</p> <p>4 shipments as opposed to the shipments'</p> <p>5 misconduct attribution.</p> <p>6 That doesn't mean that some of</p> <p>7 the costs in the other categories would not</p> <p>8 have been borne by the county government.</p> <p>9 Q. Professor McGuire, at this</p> <p>10 point we may be seeking a third day from the</p> <p>11 special master because you're not answering</p> <p>12 the questions that are posed, and you keep</p> <p>13 giving the same kinds of speeches.</p> <p>14 So we've already covered what</p> <p>15 you quantified as the costs borne by the</p> <p>16 Cuyahoga County and Summit County</p> <p>17 governments. That's in your damages report,</p> <p>18 correct?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 The speech should be completely</p> <p>21 ignored, including the implicit</p> <p>22 threat, if it's an effort to try and</p> <p>23 manipulate the truthfulness of your</p> <p>24 testimony and should be disregarded.</p> <p>25 You can answer, however --</p>	<p>1 explanation of the differences between</p> <p>2 what was done in the first report and</p> <p>3 this report.</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. And those costs that you say</p> <p>6 were borne by the Summit County and Cuyahoga</p> <p>7 County governments you say were imported into</p> <p>8 your public nuisance report?</p> <p>9 MR. SOBOL: Objection. Asked</p> <p>10 and answered.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Correct?</p> <p>13 A. Well, go on. I mean...</p> <p>14 Q. Well, go to page 80 of your</p> <p>15 report.</p> <p>16 Are you there?</p> <p>17 A. Yes.</p> <p>18 Q. You have a Table 13.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. You have a summary of</p> <p>22 monetary value of harms due to prescription</p> <p>23 opioid shipments based on Dr. Cutler's</p> <p>24 Approach 2.</p> <p>25 A. Right.</p>

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<p>1 Q. Okay?</p> <p>2 Now, go to the prior page.</p> <p>3 You have a Table 12, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Summary of harms due to</p> <p>6 shipments from 2006 to 2016, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And in each of these two</p> <p>9 tables, Tables 12 and Table 13, you have six</p> <p>10 different forms of harm, correct?</p> <p>11 A. Correct.</p> <p>12 Q. The sixth form of harm in each</p> <p>13 table is titled "Bellwether Government</p> <p>14 Costs," correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And you're referring to Summit</p> <p>17 County and Cuyahoga County, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And the numbers that you list</p> <p>20 here in each chart as being bellwether</p> <p>21 government costs are calculations that you</p> <p>22 imported from your damages report?</p> <p>23 MR. SOBOL: Objection.</p> <p>24 THE WITNESS: You will find --</p> <p>25</p>	<p>1 I didn't -- in each of these other</p> <p>2 harm categories --</p> <p>3 MR. SOBOL: There's no</p> <p>4 question. You answered the question.</p> <p>5 MR. KEYES: Don't interrupt</p> <p>6 him. Let him finish his answer.</p> <p>7 Keep going.</p> <p>8 MR. SOBOL: Well, I think he</p> <p>9 did, and then he started volunteering</p> <p>10 stuff.</p> <p>11 MR. KEYES: No, sir. He's</p> <p>12 answering the question. Please stop</p> <p>13 interrupting him when he says</p> <p>14 something that perhaps you don't like.</p> <p>15 Continue, please.</p> <p>16 MR. SOBOL: I love it. I love</p> <p>17 everything he has to say. I just</p> <p>18 don't want him volunteering things</p> <p>19 when I'm hungry and want to go to</p> <p>20 lunch.</p> <p>21 But go ahead --</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. You were saying?</p> <p>24 MR. SOBOL: -- Professor</p> <p>25 McGuire.</p>
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<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Correct?</p> <p>3 MR. SOBOL: Objection.</p> <p>4 THE WITNESS: You will find the</p> <p>5 basis for these numbers in my damages</p> <p>6 report.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. Okay. Turning to the fifth --</p> <p>9 the first form of harm, mortality deaths,</p> <p>10 correct?</p> <p>11 MR. SOBOL: Well, in these two</p> <p>12 tables?</p> <p>13 MR. KEYES: Yes.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. The costs that you are</p> <p>16 quantifying regarding mortality deaths are</p> <p>17 costs borne by individuals or communities,</p> <p>18 not costs borne by Summit County or Cuyahoga</p> <p>19 County, correct?</p> <p>20 A. See, that's not correct.</p> <p>21 Q. Where do you show the mortality</p> <p>22 deaths form of harm as causing specific costs</p> <p>23 borne by Summit County or Cuyahoga County?</p> <p>24 MR. SOBOL: Objection.</p> <p>25 THE WITNESS: I didn't do that.</p>	<p>1 THE WITNESS: I was saying, in</p> <p>2 these categories I estimated the total</p> <p>3 costs without necessarily attributing</p> <p>4 them to who bore those costs.</p> <p>5 QUESTIONS BY MR. KEYES:</p> <p>6 Q. Okay. So in your Tables 12 and</p> <p>7 13, when you are talking about the form of</p> <p>8 harm being mortality and deaths, have you</p> <p>9 quantified the portion of the costs you've</p> <p>10 calculated as being attributable or borne by</p> <p>11 Summit County or Cuyahoga County government?</p> <p>12 A. That was not my assignment</p> <p>13 here. And if I can volunteer an example, at</p> <p>14 the risk of irritating my counsel, with</p> <p>15 respect to something like NAS costs --</p> <p>16 Q. My question has nothing to do</p> <p>17 with NAS. I'm asking about mortalities and</p> <p>18 deaths. Answer the question posed.</p> <p>19 MR. SOBOL: Now you're</p> <p>20 interrupting him.</p> <p>21 MR. KEYES: I am, because he's</p> <p>22 talking about something that the</p> <p>23 question didn't address at all.</p> <p>24 MR. SOBOL: All right. We're</p> <p>25 going to take a lunch. We're going to</p>

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<p style="text-align: right;">Page 665</p> <p>1 take lunch.</p> <p>2 QUESTIONS BY MR. KEYES:</p> <p>3 Q. In Tables 12 and 13 --</p> <p>4 A. I don't mind. I don't mind.</p> <p>5 Let's finish this.</p> <p>6 Q. In Tables 12 and 13, when</p> <p>7 you're talking about --</p> <p>8 A. Let's talk about morbidity.</p> <p>9 Q. -- the form of harm being</p> <p>10 mortality and death, have you quantified</p> <p>11 anywhere in your report --</p> <p>12 MR. SOBOL: You got overridden</p> <p>13 on it. Start the question again. You</p> <p>14 got overridden. Just start the</p> <p>15 question again.</p> <p>16 He wants a clean question. He</p> <p>17 wants to continue. Start with a clean</p> <p>18 question.</p> <p>19 QUESTIONS BY MR. KEYES:</p> <p>20 Q. In Tables 12 and 13, when you</p> <p>21 were talking about the form of harm being</p> <p>22 mortality and deaths, have you quantified</p> <p>23 anywhere in your report the portion of those</p> <p>24 costs that you say were borne by Summit</p> <p>25 County or Cuyahoga County governments?</p>	<p style="text-align: right;">Page 667</p> <p>1 County or Cuyahoga County governments?</p> <p>2 MR. SOBOL: Objection. Asked</p> <p>3 and answered.</p> <p>4 THE WITNESS: Okay. This</p> <p>5 question is part of a discussion we've</p> <p>6 had about whether or not the, as I</p> <p>7 understand it, the bellwether</p> <p>8 government costs line is a complete</p> <p>9 identification of the cost borne by</p> <p>10 the plaintiffs in the categories that</p> <p>11 I've put forth in these tables.</p> <p>12 The answer to that is, no, it's</p> <p>13 not the case.</p> <p>14 And you then asked me, have I</p> <p>15 done a specific allocation of some of</p> <p>16 these costs to the plaintiffs.</p> <p>17 And what I did was to look at</p> <p>18 the total. But if you are familiar</p> <p>19 with what the components of that total</p> <p>20 are, you would see some of those would</p> <p>21 be borne by the governments. You</p> <p>22 know, for example, some of the people</p> <p>23 who die would have been government</p> <p>24 employees. Some of the other people</p> <p>25 who die would have paid taxes to the</p>
<p style="text-align: right;">Page 666</p> <p>1 MR. SOBOL: Objection. Asked</p> <p>2 and answered.</p> <p>3 THE WITNESS: I thought in</p> <p>4 previous you had also asked about</p> <p>5 morbidity. Well, I was going to give</p> <p>6 you an example of morbidity. This</p> <p>7 will clear it up in one minute.</p> <p>8 With respect to morbidity</p> <p>9 costs, what I estimate are --</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. I didn't ask about morbidity,</p> <p>12 sir. I've asked you about mortality and</p> <p>13 deaths.</p> <p>14 MR. SOBOL: I told you --</p> <p>15 QUESTIONS BY MR. KEYES:</p> <p>16 Q. Okay. Please answer the</p> <p>17 question.</p> <p>18 A. Okay.</p> <p>19 MR. SOBOL: So which question?</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. In Tables 12 and 13, when you</p> <p>22 were talking about the form of harm being</p> <p>23 mortality and deaths, have you quantified</p> <p>24 anywhere in your report the portion of those</p> <p>25 costs that you say were borne by the Summit</p>	<p style="text-align: right;">Page 668</p> <p>1 governments.</p> <p>2 So the total lost productivity,</p> <p>3 which is a component of the value of</p> <p>4 statistical life, is a very good</p> <p>5 example of a cost that is borne by</p> <p>6 different agents.</p> <p>7 Now, my assignment, as I</p> <p>8 understood it, was to give the total.</p> <p>9 You're asking if that total contains</p> <p>10 things by the governments. The answer</p> <p>11 is yes.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. No, I didn't ask that. I</p> <p>14 didn't ask whether the total contains that.</p> <p>15 I asked you specifically: Have</p> <p>16 you quantified anywhere in your report the</p> <p>17 portion of those costs that you say were</p> <p>18 borne by the Summit County or Cuyahoga County</p> <p>19 governments specific to mortality and deaths</p> <p>20 anywhere in your report?</p> <p>21 MR. SOBOL: Objection. Asked</p> <p>22 and answered.</p> <p>23 THE WITNESS: Okay. I just</p> <p>24 gave what I thought is an important</p> <p>25 and thorough answer to that question,</p>

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<p>1 which is that these cost categories</p> <p>2 contain many components. And what I</p> <p>3 did is estimate the total. And those</p> <p>4 components would be borne by -- some</p> <p>5 for the individual, some for other</p> <p>6 members of the community, some by the</p> <p>7 county governments.</p> <p>8 What I did not do, which is a</p> <p>9 more direct answer to your question,</p> <p>10 is I didn't allocate those costs in</p> <p>11 each of these categories to any of</p> <p>12 those agents.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. And the same is true for</p> <p>15 mortality deaths, morbidity, babies with NAS,</p> <p>16 crimes and child maltreatment, correct?</p> <p>17 MR. SOBOL: Objection. Form.</p> <p>18 Compound.</p> <p>19 THE WITNESS: The same is true</p> <p>20 with respect to my work in this</p> <p>21 report, which was to identify the</p> <p>22 total of those costs and then -- I</p> <p>23 mean, in answer to your question, some</p> <p>24 of those costs do fall on different</p> <p>25 agents, including the governments, but</p>	<p>1 abuse of prescription opioids?</p> <p>2 A. Well, I'm interested in harms</p> <p>3 and costs in either case.</p> <p>4 Q. In your report, do you attempt</p> <p>5 to distinguish between the costs attributable</p> <p>6 to the use and abuse of illicit opioids</p> <p>7 versus the use and abuse of prescription</p> <p>8 opioids?</p> <p>9 MR. SOBOL: Objection. Asked</p> <p>10 and answered.</p> <p>11 THE WITNESS: I'm interested in</p> <p>12 the sum of the effects of both of</p> <p>13 those.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. Okay. But in your</p> <p>16 calculations, do you break out the costs that</p> <p>17 you quantify between the costs that are</p> <p>18 attributable to the use or abuse of illicit</p> <p>19 opioids versus the costs resulting from the</p> <p>20 use or abuse of prescription opioids?</p> <p>21 MR. SOBOL: Objection. Asked</p> <p>22 and answered.</p> <p>23 THE WITNESS: Generally I just</p> <p>24 look at the total.</p> <p>25</p>
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<p>1 I didn't attempt to break out the --</p> <p>2 what you would call in economic terms</p> <p>3 the incidence of those costs according</p> <p>4 to the various actors.</p> <p>5 MR. KEYES: Okay. Why don't we</p> <p>6 take a break for lunch.</p> <p>7 VIDEOGRAPHER: The time is</p> <p>8 1:24 p.m., and we're off the record.</p> <p>9 (Off the record at 1:24 p.m.)</p> <p>10 VIDEOGRAPHER: The time is</p> <p>11 2:08 p.m., and we're on the record.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. Professor McGuire, do you have</p> <p>14 McGuire Exhibit 6 in front of you, which is</p> <p>15 your report regarding nuisance?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Is it accurate to say that in</p> <p>18 this report you attempt to measure the costs</p> <p>19 of harms that result from the use or abuse of</p> <p>20 all opioids in Summit County and Cuyahoga</p> <p>21 County?</p> <p>22 A. No, that wouldn't be accurate.</p> <p>23 Q. Do you attempt to distinguish</p> <p>24 between the costs attributable to the use or</p> <p>25 abuse of illicit opioids versus the use or</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Okay. In fact, if you look at</p> <p>3 paragraph 39 on page 22...</p> <p>4 A. I'm there.</p> <p>5 Q. The last paragraph you say, "As</p> <p>6 a reminder, the harms I attribute to</p> <p>7 shipments of prescription opioids includes</p> <p>8 harms due to the subsequent use of other</p> <p>9 opioids, e.g., heroin, fentanyl, caused by</p> <p>10 the shipments."</p> <p>11 Correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. So anywhere in your</p> <p>14 report do you separate out the costs that you</p> <p>15 quantify based on harms resulting from the</p> <p>16 use or abuse of illicit opioids from the use</p> <p>17 or abuse of prescription opioids?</p> <p>18 MR. SOBOL: Objection. Asked</p> <p>19 and answered several times now.</p> <p>20 THE WITNESS: I think I just</p> <p>21 look at the totals.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Anywhere in your report do you</p> <p>24 separate out the costs that you quantified</p> <p>25 based on harms resulting from the use or</p>

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<p>1 abuse of prescription opioids that were</p> <p>2 diverted from the harms resulting from the</p> <p>3 use or abuse of prescription opioids that</p> <p>4 were used by the people to whom they were</p> <p>5 prescribed?</p> <p>6 A. I understand what you mean by</p> <p>7 diverted.</p> <p>8 Do you mean -- it's hard to</p> <p>9 give a clear answer to that question.</p> <p>10 I looked at the total about</p> <p>11 whether the harm came from a diversion or</p> <p>12 whether the harm came from the direct</p> <p>13 consumption of the person who was prescribed</p> <p>14 the opioids.</p> <p>15 Q. You looked at the total,</p> <p>16 including both of those categories?</p> <p>17 A. It could have been in either</p> <p>18 category, yes.</p> <p>19 Q. Did you separately measure the</p> <p>20 costs of the harms resulting from people</p> <p>21 using or abusing prescription opioids that</p> <p>22 were diverted as opposed to prescription</p> <p>23 opioids that were used by the people to whom</p> <p>24 they were prescribed?</p> <p>25 A. Yeah.</p>	<p>1 harms to misconduct.</p> <p>2 Q. In fact, if we look at page 27,</p> <p>3 note 57, you say, quote, "In this report, I</p> <p>4 assess the external costs associated with</p> <p>5 prescription shipments without regard to</p> <p>6 whether they were due to defendants'</p> <p>7 misconduct."</p> <p>8 Correct?</p> <p>9 A. That's what I say there, yes.</p> <p>10 Q. And that's an accurate</p> <p>11 statement?</p> <p>12 A. That's an accurate statement.</p> <p>13 Q. And you say, quote, "I thus use</p> <p>14 the share of harms due to shipments without</p> <p>15 multiplying by Professor Rosenthal's estimate</p> <p>16 of the share of shipments due to misconduct,"</p> <p>17 end quote.</p> <p>18 Do you see that?</p> <p>19 A. I do, yes.</p> <p>20 Q. And is that an accurate</p> <p>21 statement?</p> <p>22 A. Yes, it is.</p> <p>23 Q. You state in your report that</p> <p>24 you were advised by counsel for the</p> <p>25 plaintiffs that they intend to prove that the</p>
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<p>1 MR. SOBOL: Objection. Asked</p> <p>2 and answered.</p> <p>3 THE WITNESS: I think it's the</p> <p>4 same question, but I just looked at</p> <p>5 the total, which could have been due</p> <p>6 to either diversion or consumption of</p> <p>7 the person to whom it was prescribed.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. Do you separately measure the</p> <p>10 cost of the harms resulting from people using</p> <p>11 or abusing prescription opioids that were</p> <p>12 either made or distributed by the defendants</p> <p>13 versus harms resulting from people using or</p> <p>14 abusing prescription opioids that were made</p> <p>15 or distributed by entities other than the</p> <p>16 defendants?</p> <p>17 A. I don't attempt to distinguish</p> <p>18 those made or distributed by the defendants</p> <p>19 from shipments that were made or distributed</p> <p>20 by those who might not have been a defendant.</p> <p>21 Q. Do you, anywhere in your</p> <p>22 report, Exhibit Number 2, measure the costs</p> <p>23 resulting from harms that are attributable to</p> <p>24 the defendants' misconduct?</p> <p>25 A. No, I don't attribute these</p>	<p>1 public nuisance regarding the shipment of</p> <p>2 prescription opioids arose in substantial</p> <p>3 part from the unlawful conduct by the</p> <p>4 defendants.</p> <p>5 A. I'm sorry, where are you now?</p> <p>6 Q. Page 16, paragraph 28.</p> <p>7 A. Okay. I see.</p> <p>8 Q. Okay. Do you see that</p> <p>9 sentence?</p> <p>10 A. I see the sentence.</p> <p>11 Q. Okay. What does, quote, "in</p> <p>12 substantial part" mean?</p> <p>13 A. In large part.</p> <p>14 Q. And what specific objective</p> <p>15 criteria do you -- would you use to capture</p> <p>16 the notion of "in substantial part"?</p> <p>17 MR. SOBOL: Objection.</p> <p>18 THE WITNESS: Well, this is</p> <p>19 something that I've been advised by</p> <p>20 counsel that they intend to do. It's</p> <p>21 not something that I intend to do.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Which counsel advised you of</p> <p>24 this?</p> <p>25 A. I don't remember.</p>

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<p style="text-align: right;">Page 677</p> <p>1 Q. Okay. But you don't quantify 2 in this report the cost of harms from the 3 public nuisance that are linked up with 4 defendants' unlawful conduct, right? 5 MR. SOBOL: Objection. 6 THE WITNESS: Yeah, that's 7 correct. That's correct. 8 QUESTIONS BY MR. KEYES: 9 Q. Did you attempt anywhere in 10 your report to quantify the cost of harms 11 from the public nuisance that did not arise 12 from the defendants' unlawful conduct? 13 MR. SOBOL: Objection. 14 THE WITNESS: I was trying to 15 make sure I get the logic of your 16 question correct. 17 The application of the 18 Rosenthal share, which I did not do in 19 this report in terms of quantifying 20 harms, can be interpreted as some that 21 were due to misconduct and the balance 22 not due to misconduct. 23 So in that I sum both those 24 things, I do count both those due to 25 misconduct in the Rosenthal sense as</p>	<p style="text-align: right;">Page 679</p> <p>1 and answered. 2 THE WITNESS: I didn't separate 3 those out from the total. They would 4 be included in the total. 5 QUESTIONS BY MR. KEYES: 6 Q. Right. 7 So my question was: Anywhere 8 in your report do you quantify the cost of 9 harms from the public nuisance that did not 10 arise from the defendants' unlawful conduct? 11 A. In answering, I'm not equating 12 misconduct as studied by Professor Rosenthal 13 with unlawful contact -- sorry, unlawful 14 conduct, which I understand to be a broader 15 term. 16 So if I answer it in the sense 17 of Rosenthal, I count both: those 18 attributable to Rosenthal misconduct and 19 those not attributable to Rosenthal 20 misconduct. That's an element of lawful. 21 There may well be other 22 elements of what is lawful and unlawful that 23 apply here that I'm not in a position to talk 24 about. 25 Q. And the costs that you have</p>
<p style="text-align: right;">Page 678</p> <p>1 well as those not due to misconduct. 2 QUESTIONS BY MR. KEYES: 3 Q. And so anywhere in your report 4 do you quantify the cost of harms from the 5 public nuisance that did not arise from the 6 unlawful conduct of the defendants? 7 MR. SOBOL: Objection. 8 You can answer. 9 THE WITNESS: Okay. Well, I 10 think I was answering your question in 11 perhaps a too narrow way. I was 12 answering it with respect to the 13 Rosenthal question of the -- that 14 particular unlawful -- what will be 15 alleged unlawful act, which is the 16 misleading advertising. 17 What other lawful/unlawful 18 elements of a definition here, I'm not 19 in a position to say. 20 QUESTIONS BY MR. KEYES: 21 Q. Okay. You said before that you 22 didn't quantify the cost of the harms from 23 the public nuisance that were due to 24 defendants' misconduct. 25 MR. SOBOL: Objection. Asked</p>	<p style="text-align: right;">Page 680</p> <p>1 quantified in this report are the costs of 2 harms in Summit County and Cuyahoga County. 3 correct? 4 A. That's generally correct. 5 Q. Did you back out of those cost 6 calculations the cost of harms that occurred 7 in Akron or Cleveland? 8 A. My estimates were county-level 9 only, without attributing them to 10 jurisdictions within the county. 11 Q. Right. 12 So did you back out of those 13 calculations at any point the cost of harms 14 that occurred in the cities of Akron or 15 Cleveland? 16 A. I would say no, they were 17 county-based calculations. 18 Q. Even though the City of Akron 19 and the City of Cleveland have been 20 specifically excluded from the track 1 case, 21 correct? 22 MR. SOBOL: Objection. 23 THE WITNESS: Well, I'm just 24 following what I was asked to do. And 25 the reasons, I don't know.</p>

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<p style="text-align: right;">Page 681</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. You do recognize that</p> <p>3 prescription opioids can confer positive</p> <p>4 benefits on particular individuals when used</p> <p>5 in accordance with scientifically acceptable</p> <p>6 clinical criteria?</p> <p>7 A. Yes.</p> <p>8 Q. What are those positive</p> <p>9 benefits?</p> <p>10 A. Well, there could be a</p> <p>11 reduction in pain. There could be an</p> <p>12 improvement in function.</p> <p>13 Q. Anything else?</p> <p>14 A. Those are the primary ones.</p> <p>15 Q. Do you at any point in your</p> <p>16 report quantify the benefit of prescription</p> <p>17 opioids in pain reduction?</p> <p>18 MR. SOBOL: Objection.</p> <p>19 You can answer.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. Not discuss it; quantify it.</p> <p>22 MR. SOBOL: Objection.</p> <p>23 THE WITNESS: What I do in my</p> <p>24 report is an assessment of the</p> <p>25 quantification of the amount of time</p>	<p style="text-align: right;">Page 683</p> <p>1 Q. Where in your report do you</p> <p>2 show the dollar value of the benefit of</p> <p>3 prescription opioids in the form of pain</p> <p>4 reduction?</p> <p>5 MR. SOBOL: Objection.</p> <p>6 THE WITNESS: In terms of the</p> <p>7 question of pain reduction, I didn't</p> <p>8 need to go so far as to quantify it in</p> <p>9 terms of dollars.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. Do you at any point in your</p> <p>12 report quantify the benefit of prescription</p> <p>13 opioids in increased productivity?</p> <p>14 A. I analyze studies on the effect</p> <p>15 of opioids on what I -- by productivity, I</p> <p>16 mean workforce productivity, and determine</p> <p>17 that whatever benefits there are are less</p> <p>18 than costs, which is sufficient for me to be</p> <p>19 able to say that with respect to this</p> <p>20 category of potential benefits and costs, the</p> <p>21 costs exceed the benefits.</p> <p>22 Q. Did you at any point in your</p> <p>23 report quantify the benefit of prescription</p> <p>24 opioids in the form of increased</p> <p>25 productivity?</p>
<p style="text-align: right;">Page 682</p> <p>1 or days for which clinically</p> <p>2 appropriate use of opioids would</p> <p>3 reduce pain, which is a kind of</p> <p>4 quantification.</p> <p>5 QUESTIONS BY MR. KEYES:</p> <p>6 Q. Where in your report do you</p> <p>7 have a chart that shows the quantification of</p> <p>8 the benefit of prescription opioids in the</p> <p>9 form of pain reduction?</p> <p>10 A. I don't think I have a chart.</p> <p>11 Q. Where is the number that you</p> <p>12 calculated to show the dollar benefit of</p> <p>13 prescription opioids in the form of pain</p> <p>14 reduction?</p> <p>15 A. Okay. So you're changing the</p> <p>16 question a little bit.</p> <p>17 Quantification isn't</p> <p>18 necessarily a dollar. Quantification can be</p> <p>19 done in other units. And I responded by --</p> <p>20 part of what I did, which was a</p> <p>21 quantification in terms of days of -- days</p> <p>22 with improved pain.</p> <p>23 Do you want to see where that</p> <p>24 is? Is that -- I'm not sure what the</p> <p>25 question is now.</p>	<p style="text-align: right;">Page 684</p> <p>1 MR. SOBOL: Objection. Asked</p> <p>2 and answered.</p> <p>3 THE WITNESS: I think this is</p> <p>4 the same question.</p> <p>5 And my answer, I hope, will be</p> <p>6 the same, which is that I studied the</p> <p>7 research literature on the effects of</p> <p>8 prescription opioids on workforce</p> <p>9 productivity, and as a result of that</p> <p>10 study, concluded that the positive</p> <p>11 effects on productivity are outweighed</p> <p>12 by the negative effects on</p> <p>13 productivity.</p> <p>14 So there's no net benefit to be</p> <p>15 had in the benefit column in terms of</p> <p>16 dollars or in terms of anything else</p> <p>17 with respect to opioids on that score.</p> <p>18 And that was enough for me to be able</p> <p>19 to say I'm going to be conservative</p> <p>20 and not count those additional costs</p> <p>21 that exceed the benefits.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Anywhere in your report do you</p> <p>24 show the dollar value of the benefit of</p> <p>25 prescription opioids in the form of increased</p>

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<p style="text-align: right;">Page 685</p> <p>1 productivity?</p> <p>2 MR. SOBOL: Objection. Asked</p> <p>3 and answered.</p> <p>4 THE WITNESS: I understand this</p> <p>5 to be the same question, and if for</p> <p>6 some reason it's a different question,</p> <p>7 I'm happy to try to answer that new</p> <p>8 question.</p> <p>9 What I did in my report was to</p> <p>10 investigate the research literature on</p> <p>11 the effects of opioid prescriptions on</p> <p>12 workforce productivity and determined</p> <p>13 that the negative effects of opioid</p> <p>14 prescriptions outweighed the positive</p> <p>15 effects in terms of productivity.</p> <p>16 So once that's established,</p> <p>17 quantification in dollar terms isn't</p> <p>18 necessary in order to say that the</p> <p>19 costs exceed the benefits.</p> <p>20 So as long as, you know, costs</p> <p>21 are greater than benefits, it's not --</p> <p>22 I don't need to know exactly the</p> <p>23 dollar benefits in order to make a</p> <p>24 determination of my assignment in the</p> <p>25 report.</p>	<p style="text-align: right;">Page 687</p> <p>1 or abuse of opioids?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 THE WITNESS: Well, I'm still</p> <p>4 not sure what you mean by "indirect"</p> <p>5 here, so if you can help me with that,</p> <p>6 I'll give it a shot.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. Sure.</p> <p>9 I thought you mentioned earlier</p> <p>10 in the deposition in response to a question</p> <p>11 that as a result of the mortality, there</p> <p>12 would be dollar impacts -- there could be</p> <p>13 dollar impacts on Summit County or Cuyahoga</p> <p>14 County?</p> <p>15 A. Yes, I did that.</p> <p>16 Q. And some of those could be</p> <p>17 positive dollar impacts, and some of those</p> <p>18 could be negative, correct?</p> <p>19 A. Well, that's not what I said</p> <p>20 earlier. I used an example of what I would</p> <p>21 call a negative impact, which is if someone</p> <p>22 dies, then -- I think the example I used was</p> <p>23 tax revenue, that if there's, for example, a</p> <p>24 local income tax or even a sales tax, some of</p> <p>25 a person's income would not be available for</p>
<p style="text-align: right;">Page 686</p> <p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Did you examine any indirect</p> <p>3 benefits from the use of prescription</p> <p>4 opioids?</p> <p>5 A. I'm sorry, what do you mean by</p> <p>6 "indirect benefits"?</p> <p>7 Q. Nondirect.</p> <p>8 A. Do you have another synonym you</p> <p>9 can give me?</p> <p>10 Q. No.</p> <p>11 You would agree that increased</p> <p>12 productivity and reduction of pain are direct</p> <p>13 benefits from the use of prescription</p> <p>14 opioids?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 THE WITNESS: Well, people use</p> <p>17 these terms in different ways, so I'm</p> <p>18 just trying to find out -- even the</p> <p>19 word "indirect" in the literature is</p> <p>20 used in different ways by different</p> <p>21 people.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Did you examine any indirect</p> <p>24 savings to Summit County or Cuyahoga County</p> <p>25 from the mortality that results from the use</p>	<p style="text-align: right;">Page 688</p> <p>1 their consumption. They would be</p> <p>2 contributing to public revenues.</p> <p>3 Q. And why do you call that a</p> <p>4 negative effect?</p> <p>5 A. Well, it's a negative effect on</p> <p>6 the county because the income is gone from</p> <p>7 the individual, and that means less tax</p> <p>8 collections.</p> <p>9 Q. And could there be positive</p> <p>10 dollar impacts on Summit County or Cuyahoga</p> <p>11 County from the mortality that you attempt to</p> <p>12 quantify?</p> <p>13 MR. SOBOL: So is the county</p> <p>14 better off with the people being</p> <p>15 killed by opioids?</p> <p>16 MR. KEYES: That's not my</p> <p>17 question.</p> <p>18 You can answer my question, not</p> <p>19 his. He can ask you questions later.</p> <p>20 THE WITNESS: No, generally</p> <p>21 not.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. When you referred earlier to</p> <p>24 studying the economic literature on workforce</p> <p>25 productivity and the impact of opioids on</p>

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<p>1 that productivity, what studies did you look 2 at?</p> <p>3 A. There's a set of studies that I 4 refer to in my report, are the ones I looked 5 at.</p> <p>6 Q. Okay. Can you name any of 7 them?</p> <p>8 A. Right now?</p> <p>9 Q. Yeah.</p> <p>10 A. Yes. The authors include 11 Kilby, I think Angela is her first name; 12 Janet Currie and Molly Schnell; Alan Krueger; 13 a first authored paper by Aliprantis. And 14 there's one or two more that I can't remember 15 right now.</p> <p>16 Q. Did any of the studies you just 17 listed examine the impact of prescription 18 opioids on worker productivity in Summit 19 County or Cuyahoga County?</p> <p>20 A. I think they would have -- 21 there're broader studies that would have 22 included -- I'd have to go back and check 23 study by study, but most of them were 24 broad-based studies that might have been the 25 whole United States or perhaps large counties</p>	<p>1 MR. SOBOL: Objection. 2 THE WITNESS: I do. 3 QUESTIONS BY MR. KEYES: 4 Q. Yes? 5 MR. SOBOL: Objection. 6 QUESTIONS BY MR. KEYES: 7 Q. Do you recall that? 8 MR. SOBOL: Objection. 9 THE WITNESS: I do recall that. 10 QUESTIONS BY MR. KEYES: 11 Q. And do you remember saying that 12 alcohol yields a, quote, "overwhelming net 13 cost to society"? 14 A. I was -- 15 MR. SOBOL: No, that's a 16 mischaracterization of the report. 17 Are you referring to either 18 report? 19 MR. KEYES: I'm referring to a 20 specific statement he made. 21 THE WITNESS: Yeah, let me take 22 a look. I think that would clear up 23 any confusion here. 24 Okay. So this is paragraph 27. 25 I think there's just one paragraph,</p>
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<p>1 in the United States that likely would 2 have -- some of them, I'm sure, included 3 Summit and Cuyahoga.</p> <p>4 Q. Why are you so sure?</p> <p>5 A. Because it's my understanding 6 what the studies did.</p> <p>7 Q. Did you look at any studies 8 that examined the data specific to Summit 9 County and Cuyahoga County?</p> <p>10 A. Examined the data with respect 11 to what?</p> <p>12 Q. Did you look at any studies 13 that examined data specific to Summit County 14 or Cuyahoga County regarding the impact of 15 prescription opioids on worker productivity?</p> <p>16 A. One of the Ohio reports that -- 17 I think it's -- I refer to it as a Swank 18 report -- is Ohio-specific, and it talks 19 about productivity for Ohio. And I don't 20 remember whether it broke down its findings 21 county by county, but it would have applied 22 to our bellwether.</p> <p>23 Q. In your report you reference 24 alcohol as a potential analogy. 25 Do you recall that?</p>	<p>1 yeah, where it's not exactly an 2 analogy, but it's a kind of 3 clarification that the -- another, you 4 know, potential in this case, I guess 5 the substance that might be considered 6 a -- that may have overwhelming costs 7 versus benefits, is what I'm 8 mentioning here, is not sufficient for 9 it to be regarded as a public 10 nuisance.</p> <p>11 QUESTIONS BY MR. KEYES: 12 Q. I'm not sure I understood your 13 answer. 14 You said that even though 15 alcohol may cause overwhelming net costs to 16 society, it is not necessarily a public 17 nuisance? 18 MR. SOBOL: Objection. That's 19 a misreading of the report. 20 MR. KEYES: I'm not asking 21 about the report. I'm asking about 22 your answer. 23 THE WITNESS: What I -- my 24 answer is that I didn't use it as an 25 analogy. I use it as an illustration</p>

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<p>1 of a situation in which the costs may</p> <p>2 be overwhelming in relation to the</p> <p>3 benefits. And that's a hypothetical,</p> <p>4 as I say here. I'm sure you know. I</p> <p>5 didn't do that analysis. I'm just</p> <p>6 saying, well, this might be true.</p> <p>7 Society might decide to condone</p> <p>8 that and not pursue any legal theory</p> <p>9 of fault related to alcohol.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. Because society has determined</p> <p>12 that buying and selling and consuming alcohol</p> <p>13 within certain constraints is permissible?</p> <p>14 A. That might be part of it.</p> <p>15 Q. And yet selling and</p> <p>16 distributing prescription opioids is legal</p> <p>17 within certain constraints, correct?</p> <p>18 A. Well, I don't like to talk too</p> <p>19 much about what is legal and illegal, but my</p> <p>20 understanding is that some of that is fine.</p> <p>21 Q. And if I understand you</p> <p>22 correctly, you're saying alcohol, because of</p> <p>23 society's determination that it can be a</p> <p>24 legal activity, it is not a public nuisance</p> <p>25 even though it can create an overwhelming net</p>	<p>1 A. And as that sentence says "that</p> <p>2 for myriad reasons."</p> <p>3 So I understood your question</p> <p>4 to be asking about the lawful/unlawful, the</p> <p>5 condonance of selling alcohol, but there's</p> <p>6 other things that may factor into that.</p> <p>7 Q. What differentiates alcohol</p> <p>8 from prescription opioids if they can both</p> <p>9 create an overwhelming net cost to society</p> <p>10 yet be condoned by society and be legal</p> <p>11 activities within certain constraints?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 THE WITNESS: Okay. First of</p> <p>14 all, I'm -- I don't know that that's</p> <p>15 true with respect to alcohol. I'm</p> <p>16 only using that as an illustration to</p> <p>17 capture that the overwhelming cost</p> <p>18 versus benefits isn't a sufficient</p> <p>19 condition in order to have someone</p> <p>20 qualify from a legal perspective as a</p> <p>21 public nuisance.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. And if it's not sufficient,</p> <p>24 then what else do you need to qualify from a</p> <p>25 legal perspective as a public nuisance as you</p>
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<p>1 cost to society, right?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 Mischaracterizes the testimony.</p> <p>4 THE WITNESS: Yeah, that's not</p> <p>5 exactly what I said.</p> <p>6 QUESTIONS BY MR. KEYES:</p> <p>7 Q. You said, "An economic weighing</p> <p>8 of the benefits versus costs of the</p> <p>9 prevalence of alcohol could yield an</p> <p>10 overwhelming net cost to society, yet for</p> <p>11 myriad reasons, society condones the</p> <p>12 prevalence of alcohol, and subject to its</p> <p>13 regulation and appropriate use, selling,</p> <p>14 buying and consuming alcohol are legal</p> <p>15 activities."</p> <p>16 A. Yes.</p> <p>17 MR. SOBOL: Objection.</p> <p>18 Mischaracterizes the testimony. It's</p> <p>19 only one portion of the answer that</p> <p>20 you just read back.</p> <p>21 QUESTIONS BY MR. KEYES:</p> <p>22 Q. I just read you what you said</p> <p>23 in your report.</p> <p>24 A. I understand that.</p> <p>25 Q. Okay.</p>	<p>1 approach it as an expert in this case?</p> <p>2 MR. SOBOL: Objection. Scope.</p> <p>3 THE WITNESS: Well, I</p> <p>4 understood my assignment to be guided</p> <p>5 by a definition of public nuisance</p> <p>6 that is based on the law, that I</p> <p>7 interpreted as having three components</p> <p>8 that we discussed earlier today.</p> <p>9 QUESTIONS BY MR. KEYES:</p> <p>10 Q. And that's the legal definition</p> <p>11 that you're applying that you got from</p> <p>12 counsel, correct?</p> <p>13 A. Well, the legal definition is</p> <p>14 in paragraph 7 or something in this second</p> <p>15 report. And my interpretation of that in</p> <p>16 terms that an economist can work with are, I</p> <p>17 think, in paragraph 38.</p> <p>18 Q. So in determining that there's</p> <p>19 a public nuisance, you are applying your</p> <p>20 interpretation in paragraph 38 of a legal</p> <p>21 definition that you were supplied in</p> <p>22 paragraph 7?</p> <p>23 A. Well, I broke down the -- what</p> <p>24 I thought to be the essential elements of</p> <p>25 paragraph 7, which is a legal definition, and</p>

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<p>1 I said, here's what I think I need to do.</p> <p>2 And that's -- I am being transparent. That's</p> <p>3 what I said I needed to do; that's what I</p> <p>4 did.</p> <p>5 Q. And you're not applying the</p> <p>6 standard for a public nuisance that you</p> <p>7 described in economic terms in paragraph 16</p> <p>8 of your report?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. Correct?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 Mischaracterizes the testimony.</p> <p>14 THE WITNESS: Well, I think as</p> <p>15 we discussed earlier, this is not a</p> <p>16 definition. If you want a definition,</p> <p>17 it's paragraph 38 where I use the word</p> <p>18 "definition" and I think explain quite</p> <p>19 clearly how I define a public</p> <p>20 nuisance.</p> <p>21 QUESTIONS BY MR. KEYES:</p> <p>22 Q. You calculate what you think</p> <p>23 are the costs of mortality as a result of the</p> <p>24 opioid epidemic in Summit County and Cuyahoga</p> <p>25 County, correct?</p>	<p>1 Q. Tell me how it's wrong then.</p> <p>2 A. I do not -- it's wrong to say</p> <p>3 that I quantify mortality costs due to the</p> <p>4 opioid epidemic. I don't do that.</p> <p>5 Q. What do you do?</p> <p>6 A. What I do is contained in my</p> <p>7 report, which is to quantify the harm due to</p> <p>8 shipments.</p> <p>9 Q. Okay. You purport to quantify</p> <p>10 the costs of mortality as a harm attributable</p> <p>11 to shipments of opioids, correct?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. Is that correct?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 THE WITNESS: Do you mind</p> <p>17 reading it to me again? Sorry.</p> <p>18 QUESTIONS BY MR. KEYES:</p> <p>19 Q. You purport to quantify the</p> <p>20 costs of mortality as a harm attributable to</p> <p>21 shipments of opioids, correct?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 THE WITNESS: Yeah, that sounds</p> <p>24 right to me.</p> <p>25</p>
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<p>1 A. That's not correct.</p> <p>2 Q. How is that incorrect?</p> <p>3 A. Because that's not what I do.</p> <p>4 Q. You have an entire Appendix C</p> <p>5 on mortality, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you identify mortality as</p> <p>8 one of the harms that results from the opioid</p> <p>9 epidemic, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And then you quantify the costs</p> <p>12 of that harm, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And --</p> <p>15 A. But still, I'm not confirming</p> <p>16 your question.</p> <p>17 Q. When you quantify the costs of</p> <p>18 mortality as a harm that results from the</p> <p>19 opioid epidemic, you include all deaths</p> <p>20 attributable to overdoses on opioids?</p> <p>21 A. First of all, that's not what I</p> <p>22 do.</p> <p>23 Q. Why not?</p> <p>24 How is it wrong?</p> <p>25 A. Because it's not what I do.</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. And in doing so, your</p> <p>3 calculations include deaths from overdoses on</p> <p>4 opioids that you say are attributable to</p> <p>5 shipments of opioids, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And those deaths include</p> <p>8 overdoses on illegal opioids as well as</p> <p>9 deaths on -- from overdoses of prescription</p> <p>10 opioids, correct?</p> <p>11 A. That's also correct.</p> <p>12 Q. And those deaths include</p> <p>13 overdoses on prescription opioids that were</p> <p>14 diverted as well as deaths from overdoses on</p> <p>15 prescription opioids that were prescribed to</p> <p>16 the person who died?</p> <p>17 A. They would include deaths for</p> <p>18 the person who received the prescription as</p> <p>19 well as someone who might have taken those</p> <p>20 pills if they were resold or diverted in some</p> <p>21 way.</p> <p>22 Q. In your calculations, do you</p> <p>23 account for the fact that some of the</p> <p>24 opioid-related deaths in your calculations</p> <p>25 would have occurred at some point in the</p>

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<p>1 absence of the users ever using prescription 2 opioids? 3 MR. SOBOL: Objection. 4 THE WITNESS: What I do by 5 attributing deaths to shipments, I 6 address this issue by asking the 7 question that -- asking the -- that 8 logical question: If the shipments 9 had been higher or lower, would the 10 death rates have been higher or lower. 11 And the empirical connection 12 that's established between that means 13 that the deaths that I count are 14 caused by the shipments. 15 QUESTIONS BY MR. KEYES: 16 Q. Now when you say you "addressed 17 that issue," you're saying you address that 18 issue by using percentages you receive from 19 Professor Cutler, correct? 20 A. That's correct, yes. 21 Q. Okay. So does that methodology 22 account for the fact that if there had been 23 no prescription shipment -- opioid shipment, 24 some people still would have used an illegal 25 drug and still would have died?</p>	<p>1 MR. SOBOL: Objection. 2 THE WITNESS: I would have to 3 look to see how many I cited. 4 QUESTIONS BY MR. KEYES: 5 Q. Which of those six studies uses 6 the VSL, if any? 7 A. Well, some do. I'd have to go 8 back and look. 9 Would you like me to do that? 10 Q. Why don't you look at page 61. 11 A. All right. So what are you 12 asking me? 13 Q. I asked you which of the 14 studies you cite in your discussion actually 15 uses the VSL. 16 A. All right. Well, the one I 17 discuss in the paragraph on page 61 uses the 18 VSL. 19 Q. Is it your understanding that 20 the VSL is usually used for regulatory 21 purposes? 22 A. Well, it's used for many 23 purposes, but including regulatory purposes, 24 yes. 25 Q. Have you ever used the VSL to</p>
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<p>1 A. It does, yes. 2 Q. How so? 3 A. Well, Professor Cutler's 4 method, which is what we're talking about 5 here, attributes a share of opioid-related 6 deaths to shipments, not 100 percent. So 7 it's not attributing -- sorry -- not 8 attributing all deaths to opioids to 9 shipments. 10 In fact, the methodology is 11 designed to be able to distinguish between 12 deaths that might have occurred otherwise and 13 those that can be reliably attributed to 14 shipments. 15 Q. And in quantifying what you say 16 are the costs of mortality, you use the VSL, 17 correct? 18 A. I do, yes. 19 Q. What is the VSL? 20 A. VSL is an abbreviation for 21 something called the value of a statistical 22 life. 23 Q. And you cite six studies in the 24 section where you attempt to quantify the 25 costs of mortality, correct?</p>	<p>1 quantify costs in a lawsuit? 2 A. I don't think I have, no. 3 Q. You calculated the costs of 4 morbidity in your report? 5 A. Aspect of the cost of 6 morbidity. 7 Q. That aspect being the number of 8 people who have opioid use disorder? 9 A. That aspect being the elevated 10 health care costs associated with opioid use 11 disorder. 12 Q. And you calculate what you 13 think are the number of people with opioid 14 use disorder arising from shipments? 15 A. I, again, apply results from 16 Professor Cutler to make that determination, 17 yes. 18 Q. In your calculations of the 19 number of people with opioid use disorder as 20 a result of shipments, you do not distinguish 21 between people who used illicit opioids 22 versus prescription opioids, correct? 23 A. Well, this is the same issue 24 that you asked about with respect to 25 mortality. The methodology applied by</p>

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<p>1 Professor Cutler is explicitly designed to</p> <p>2 sort that out and attribute the, in this</p> <p>3 case, disease due to the shipments.</p> <p>4 Q. But you don't distinguish</p> <p>5 between people who have the disease as a</p> <p>6 result of using an illicit opioid versus</p> <p>7 people who have the disease as a result of</p> <p>8 using prescription opioids --</p> <p>9 MR. SOBOL: Objection.</p> <p>10 QUESTIONS BY MR. KEYES:</p> <p>11 Q. -- correct?</p> <p>12 MR. SOBOL: Objection. Asked</p> <p>13 and answered.</p> <p>14 THE WITNESS: Well, what is</p> <p>15 important for me is to distinguish</p> <p>16 those that are due to shipments and</p> <p>17 not due to shipments, and due to</p> <p>18 shipments could have different routes</p> <p>19 of cause.</p> <p>20 And what -- I have that -- the</p> <p>21 precise answer that I need from</p> <p>22 Professor Cutler's report.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. So your calculations include</p> <p>25 people who have opioid use disorder,</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Did you look at any data sets</p> <p>3 specific to Summit County or Cuyahoga County</p> <p>4 regarding the prevalence of opioid use</p> <p>5 disorder?</p> <p>6 MR. SOBOL: Final or draft?</p> <p>7 Not drafts.</p> <p>8 QUESTIONS BY MR. KEYES:</p> <p>9 Q. Did you look at any data sets</p> <p>10 specific to Summit County or Cuyahoga County</p> <p>11 regarding the prevalence of opioid use</p> <p>12 disorder?</p> <p>13 A. I'm not 100 percent sure. The</p> <p>14 NSDUH -- sorry. A data set that's National</p> <p>15 Survey on Drug Use and Health, affectionately</p> <p>16 called NSDUH, has some sub-national and, I</p> <p>17 think for some years, some sub-state</p> <p>18 information. I may have looked at that at</p> <p>19 some point.</p> <p>20 Q. Can you be any more specific</p> <p>21 other than "may have looked at"?</p> <p>22 A. Not right now, sorry.</p> <p>23 Q. Did you look at any Medicaid</p> <p>24 data regarding the prevalence of opioid use</p> <p>25 disorder in Summit County or Cuyahoga County?</p>
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<p>1 regardless of whether they used an illicit</p> <p>2 opioid or a prescription opioid, correct?</p> <p>3 MR. SOBOL: Objection. Asked</p> <p>4 and answered several times.</p> <p>5 THE WITNESS: Well, it's -- the</p> <p>6 question I'm called to answer is how</p> <p>7 much of the opioid disease is due to</p> <p>8 shipments, and I have very good</p> <p>9 estimates of that from Professor</p> <p>10 Cutler.</p> <p>11 QUESTIONS BY MR. KEYES:</p> <p>12 Q. Right.</p> <p>13 But in doing your calculations</p> <p>14 and identifying the people with opioid use</p> <p>15 disorder, did you limit yourself to people</p> <p>16 who have opioid use disorder as a result of</p> <p>17 using prescription opioids?</p> <p>18 MR. SOBOL: Objection. Asked</p> <p>19 and answered.</p> <p>20 THE WITNESS: I began with a</p> <p>21 total number and then took a share of</p> <p>22 that total number that's attributable</p> <p>23 to shipments. That share could have</p> <p>24 come from either of those groups.</p> <p>25</p>	<p>1 A. Yes.</p> <p>2 Q. What data did you look at?</p> <p>3 A. There was at one point</p> <p>4 consideration of a claims data set that</p> <p>5 included some Medicaid.</p> <p>6 Q. What data set are you referring</p> <p>7 to?</p> <p>8 A. Well, it was a data set that</p> <p>9 was available by a claims processor, and I</p> <p>10 don't remember the name.</p> <p>11 Q. Where did you get that data?</p> <p>12 A. I didn't ever get it.</p> <p>13 Q. You considered looking at it</p> <p>14 but did not look at it?</p> <p>15 A. Well, by "look at data" I mean</p> <p>16 look at, in some cases, summaries of data.</p> <p>17 And with respect to Medicaid, the coverage</p> <p>18 was poor and unreliable for a basis for</p> <p>19 estimates.</p> <p>20 Q. What makes you say it was poor</p> <p>21 and unreliable?</p> <p>22 A. Looking at the tables that had,</p> <p>23 you know, for example, number of people who</p> <p>24 were covered by Medicaid in different parts</p> <p>25 of the state.</p>

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<p>1 Q. What criteria did you use to</p> <p>2 decide it was, quote, poor and unreliable?</p> <p>3 A. Well, my professional</p> <p>4 experience in doing empirical work, you need</p> <p>5 a certain amount of observations before you</p> <p>6 can really say anything.</p> <p>7 Q. Did you analyze any data from</p> <p>8 the Summit County ADM Board to determine the</p> <p>9 prevalence of opioid use disorder in that</p> <p>10 county?</p> <p>11 A. I'd have to go back and see</p> <p>12 what I did with the ADM Board.</p> <p>13 Q. Well, sitting here today, did</p> <p>14 you look at that data at any point?</p> <p>15 MR. SOBOL: Objection. Asked</p> <p>16 and answered.</p> <p>17 THE WITNESS: I would have to</p> <p>18 go back and take a look to remind</p> <p>19 myself.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. If you had used it, you would</p> <p>22 have cited it in your report, correct?</p> <p>23 A. Yes, I believe I would have.</p> <p>24 Q. Did you analyze any claims data</p> <p>25 from the Cuyahoga County ADAMHS Board to</p>	<p>1 undercounts.</p> <p>2 And then with respect to the</p> <p>3 local jurisdictions here, if you look at the</p> <p>4 death rate from opioids, the rate is greater</p> <p>5 in our bellwethers than the difference in the</p> <p>6 rates of opioid use disorder, implying that</p> <p>7 the local counts for opioid use disorder are</p> <p>8 also underestimates for our bellwethers.</p> <p>9 Q. To estimate the excess costs</p> <p>10 attributable to opioid use disorder in Summit</p> <p>11 County and Cuyahoga County, you used the</p> <p>12 Florence study findings?</p> <p>13 MR. SOBOL: Objection.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. Is that correct?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 THE WITNESS: Well, if you look</p> <p>18 at the report, I considered a number</p> <p>19 of similar studies and then ended up</p> <p>20 using the Florence numbers for various</p> <p>21 categories of beneficiaries, depending</p> <p>22 on what their health insurance</p> <p>23 coverage was.</p> <p>24 But these numbers are not very</p> <p>25 much different in all the studies I</p>
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<p>1 determine the prevalence of opioid use</p> <p>2 disorder in that county?</p> <p>3 A. No, I didn't analyze any claims</p> <p>4 data for that purpose.</p> <p>5 Q. In your calculations, you</p> <p>6 assume that the prevalence of opioid use</p> <p>7 disorder in Cuyahoga County and Summit County</p> <p>8 is the same as the national rate of</p> <p>9 prevalence, correct?</p> <p>10 A. Yes, it's a general assumption,</p> <p>11 which is widely regarded as being</p> <p>12 conservative.</p> <p>13 Q. Widely regarded by whom as</p> <p>14 being conservative?</p> <p>15 A. By people who -- researchers</p> <p>16 who study this field.</p> <p>17 Q. Can you point me to someone</p> <p>18 specific who says that by looking at national</p> <p>19 data you're being conservative?</p> <p>20 A. Well, there's two senses in</p> <p>21 which it's conservative. One sense in which</p> <p>22 NSDUH is conservative, it misses people who</p> <p>23 may be institutionalized. Respondents may be</p> <p>24 reluctant to acknowledge all their drug</p> <p>25 history. Both of those things would lead to</p>	<p>1 reviewed.</p> <p>2 QUESTIONS BY MR. KEYES:</p> <p>3 Q. Did you do anything to validate</p> <p>4 the Florence study?</p> <p>5 MR. SOBOL: Objection.</p> <p>6 THE WITNESS: Well, one form of</p> <p>7 validation is checking to see whether</p> <p>8 the literature, as we call it,</p> <p>9 contains other papers that seem to</p> <p>10 come to similar findings, and that's</p> <p>11 exactly what validation means.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. You attempt to calculate the</p> <p>14 number of NAS cases that are attributable to</p> <p>15 opioid shipments, correct?</p> <p>16 A. I do.</p> <p>17 Q. And you first took data from</p> <p>18 the Ohio Department of Health website on the</p> <p>19 total hospitalizations among Ohio resident</p> <p>20 newborns for NAS, neonatal abstinence</p> <p>21 syndrome, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And you assumed that all NAS</p> <p>24 cases were related to opioids, correct?</p> <p>25 A. Well, that's based on data from</p>

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<p>1 Ohio.</p> <p>2 Q. What do you mean it's based</p> <p>3 on --</p> <p>4 A. Well, it's based -- I didn't</p> <p>5 make that up. I referred to -- I'd have to</p> <p>6 again look to see what the specific reference</p> <p>7 is.</p> <p>8 Q. Well, you --</p> <p>9 A. But the information I had</p> <p>10 indicated that almost all cases of NAS in</p> <p>11 Ohio were due to opioids.</p> <p>12 Q. What is your authority for that</p> <p>13 proposition, that almost all cases of NAS in</p> <p>14 Ohio were due to opioids?</p> <p>15 A. I'd need to look. I don't know</p> <p>16 if it's in the appendix or the text, so...</p> <p>17 According to the Ohio</p> <p>18 Department of Health, virtually all cases of</p> <p>19 NAS are due to opioids. That's paragraph 53.</p> <p>20 Q. Did you consider Professor</p> <p>21 Young's opinions on NAS in doing your</p> <p>22 calculations?</p> <p>23 A. I don't think I needed</p> <p>24 Professor Young to do this. I had Ohio data</p> <p>25 for a count. I had this information from</p>	<p>1 withdrawal from opioids is neonatal</p> <p>2 abstinence syndrome?</p> <p>3 A. I think this sentence addresses</p> <p>4 that. "According to the Ohio Department of</p> <p>5 Health, virtually all cases of NAS are due to</p> <p>6 opioids."</p> <p>7 That's what I needed to know.</p> <p>8 Q. Okay. Do you have an</p> <p>9 understanding as to whether practitioners</p> <p>10 distinguish between neonatal abstinence</p> <p>11 syndrome and neonatal opioid withdrawal?</p> <p>12 A. Distinguish in what way?</p> <p>13 Q. When classifying or reporting</p> <p>14 incidence, whether they appropriately</p> <p>15 distinguish between neonatal abstinence</p> <p>16 syndrome and neonatal opioid withdrawal?</p> <p>17 MR. SOBOL: Objection.</p> <p>18 THE WITNESS: Again, that's</p> <p>19 outside my expertise.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. Did you look into that?</p> <p>22 MR. SOBOL: Objection. Asked</p> <p>23 and answered.</p> <p>24 THE WITNESS: I think the</p> <p>25 statement that virtually all cases of</p>
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<p>1 Ohio about what those NAS cases were due to.</p> <p>2 I had data on the relative charges of cases</p> <p>3 with and without NAS. I confined my</p> <p>4 assessment to only those costs, which I</p> <p>5 consider to be probably the most conservative</p> <p>6 part of this report. And those were the</p> <p>7 elements of my calculation regarding the</p> <p>8 costs due to shipments of extra NAS -- of the</p> <p>9 harms due to NAS in our bellwethers.</p> <p>10 Q. What is the correct term and</p> <p>11 diagnostic category for infants that</p> <p>12 experience withdrawal from opioids?</p> <p>13 A. I think it's a -- it's within</p> <p>14 the NAS category.</p> <p>15 Q. Is neonatal abstinence</p> <p>16 syndrome, NAS, the correct term and</p> <p>17 diagnostic category for infants who</p> <p>18 experience withdrawal from opioids?</p> <p>19 MR. SOBOL: Objection.</p> <p>20 THE WITNESS: You're outside my</p> <p>21 expertise. Sorry.</p> <p>22 QUESTIONS BY MR. KEYES:</p> <p>23 Q. Did you do any research into</p> <p>24 whether the correct term and diagnostic</p> <p>25 category for infants who experience</p>	<p>1 NAS are due to opioids is exactly what</p> <p>2 I need to know.</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. In your calculations on the</p> <p>5 cost of crime that you say results from</p> <p>6 shipments, you used NIBRS data?</p> <p>7 A. That's correct.</p> <p>8 Q. Did you look at any data</p> <p>9 specific to Summit County or Cuyahoga County?</p> <p>10 A. Yes.</p> <p>11 Q. What data did you look at that</p> <p>12 was specific to Summit County or Cuyahoga</p> <p>13 County?</p> <p>14 A. The data in the NIBRS includes</p> <p>15 the county indicator. Those were the crime</p> <p>16 counts I used.</p> <p>17 Q. Did you consider whether the</p> <p>18 crime rate has stayed the same, fallen or</p> <p>19 risen in recent years?</p> <p>20 A. Yes.</p> <p>21 Q. What did you conclude?</p> <p>22 A. Well, I concluded very</p> <p>23 specifically what the rates were in different</p> <p>24 years.</p> <p>25 Q. And has the rate fallen in the</p>

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<p>1 last two years in either Summit County or</p> <p>2 Cuyahoga County?</p> <p>3 A. I'd have to go back and check,</p> <p>4 but I have the numbers, which is what I need.</p> <p>5 Q. Based on NIBRS, you're saying?</p> <p>6 A. That's right.</p> <p>7 Q. Did you --</p> <p>8 MR. SOBOL: Do you want him to</p> <p>9 look or not?</p> <p>10 MR. KEYES: No. If he has it</p> <p>11 in his report, then I can look at the</p> <p>12 report.</p> <p>13 QUESTIONS BY MR. KEYES:</p> <p>14 Q. Did you look at any databases</p> <p>15 specific to Summit County and Cuyahoga County</p> <p>16 regarding crimes such as the LERMS database?</p> <p>17 A. Well, I did look at</p> <p>18 county-specific data, yes, in the form of the</p> <p>19 NIBRS.</p> <p>20 Q. Did you look at the LERMS</p> <p>21 database that is specific to Summit County or</p> <p>22 Cuyahoga County?</p> <p>23 A. No, I used the NIBRS.</p> <p>24 Q. When you attempted to quantify</p> <p>25 the costs that you attribute to children</p>	<p>1 is a part of the David methodology,</p> <p>2 David Cutler's methodology.</p> <p>3 QUESTIONS BY MR. KEYES:</p> <p>4 Q. So you again refer to Professor</p> <p>5 Cutler and what he did?</p> <p>6 A. I do refer to Professor Cutler</p> <p>7 and what he did. This is a question he</p> <p>8 addressed.</p> <p>9 Q. You say in your report that</p> <p>10 based on the Perri, Kessler and Egilman</p> <p>11 reports, quote, "The manufacturing defendants</p> <p>12 knew or should have known that they were</p> <p>13 making misleading statements about the safety</p> <p>14 and efficacy of the prescription opioids they</p> <p>15 manufactured."</p> <p>16 A. Do you mind pointing to where</p> <p>17 you're reading?</p> <p>18 Q. Page 50, paragraph 90.</p> <p>19 A. Okay. I'm there.</p> <p>20 Q. And you continue that, quote,</p> <p>21 "Marketing by the defendants was consistent</p> <p>22 in conveying the message that the risk of</p> <p>23 addiction in patients taking opioids for pain</p> <p>24 was minimal, the tolerance, dependence and</p> <p>25 addiction were not serious concerns, and that</p>
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<p>1 being mistreated as a result of opioid</p> <p>2 shipments, am I correct in understanding that</p> <p>3 you rely on Dr. Young to identify the number</p> <p>4 of children who are subject to maltreatment</p> <p>5 in Summit County and Cuyahoga County?</p> <p>6 A. Yes, I believe that's correct.</p> <p>7 Q. And you rely on Cutler's</p> <p>8 percentage to estimate the share of</p> <p>9 maltreated children due to opioid shipments?</p> <p>10 A. That's also correct.</p> <p>11 Q. And by taking those two</p> <p>12 figures, you can identify, you think, the</p> <p>13 number of children whose parents mistreated</p> <p>14 them as a result of opioid shipments?</p> <p>15 A. That's correct.</p> <p>16 MR. SOBOL: Objection.</p> <p>17 THE WITNESS: That's correct.</p> <p>18 QUESTIONS BY MR. KEYES:</p> <p>19 Q. For purposes of your</p> <p>20 calculations, you assume that if parents had</p> <p>21 not used opioids, they would not have</p> <p>22 mistreated their children, correct?</p> <p>23 MR. SOBOL: Objection.</p> <p>24 Objection.</p> <p>25 THE WITNESS: This is a -- this</p>	<p>1 opioids were the safest and most effective</p> <p>2 treatment for chronic/long-term pain."</p> <p>3 Do you see that?</p> <p>4 A. I do see that.</p> <p>5 Q. And that statement is --</p> <p>6 MR. SOBOL: Misquoted.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. That statement is also based on</p> <p>9 the Perri, Kessler and Egilman report?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Which defendants engaged</p> <p>12 in this marketing with misleading statements?</p> <p>13 MR. SOBOL: Objection. Scope.</p> <p>14 THE WITNESS: It wasn't</p> <p>15 something that I studied.</p> <p>16 QUESTIONS BY MR. KEYES:</p> <p>17 Q. Which marketing of the</p> <p>18 defendants included these misleading</p> <p>19 statements?</p> <p>20 MR. SOBOL: Objection. Scope.</p> <p>21 THE WITNESS: That's also not</p> <p>22 something I studied.</p> <p>23 QUESTIONS BY MR. KEYES:</p> <p>24 Q. So you're relying entirely on</p> <p>25 what those three other experts have said when</p>

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<p>1 you make these two statements?</p> <p>2 MR. SOBOL: Objection.</p> <p>3 THE WITNESS: That's not what I</p> <p>4 said, no.</p> <p>5 If you go on in the section,</p> <p>6 you'll see more.</p> <p>7 QUESTIONS BY MR. KEYES:</p> <p>8 Q. Well, I asked you what your</p> <p>9 basis -- which defendants you were talking</p> <p>10 about and which marketing you were talking</p> <p>11 about, and you said, "That's also not</p> <p>12 something I studied."</p> <p>13 I'm asking: Are you relying --</p> <p>14 when you make those statements, are you</p> <p>15 relying on what the three experts said?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 THE WITNESS: Well, I'm not</p> <p>18 sure -- what "those statements" you're</p> <p>19 referring to.</p> <p>20 QUESTIONS BY MR. KEYES:</p> <p>21 Q. The two statements that I just</p> <p>22 read from your report.</p> <p>23 A. Okay.</p> <p>24 MR. SOBOL: Objection. I don't</p> <p>25 know which two statements you're</p>	<p>1 the prescription opioids they manufactured."</p> <p>2 Then you say, "Marketing by the</p> <p>3 defendants was consistent in conveying the</p> <p>4 message that the risk of addiction in</p> <p>5 patients taking opioids for pain was minimal,</p> <p>6 the tolerance, dependence and addiction were</p> <p>7 not serious concerns, and that opioids were</p> <p>8 the safest and most effective treatment for</p> <p>9 chronic/long-term pain."</p> <p>10 Those are statements in</p> <p>11 paragraph 90 by you.</p> <p>12 MR. SOBOL: Objection.</p> <p>13 Misstatement.</p> <p>14 QUESTIONS BY MR. KEYES:</p> <p>15 Q. I asked you what manufacturing</p> <p>16 defendants you were talking about. You said</p> <p>17 you didn't know.</p> <p>18 A. I said I didn't study it.</p> <p>19 Q. Okay.</p> <p>20 I asked you what specific</p> <p>21 statements were misleading, and you said you</p> <p>22 didn't study that.</p> <p>23 MR. SOBOL: Objection.</p> <p>24 THE WITNESS: Yes.</p> <p>25</p>
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<p>1 talking about. I see several</p> <p>2 statements.</p> <p>3 MR. KEYES: The two statements</p> <p>4 I read.</p> <p>5 THE WITNESS: Well, what I</p> <p>6 said --</p> <p>7 MR. SOBOL: Well, one of them</p> <p>8 you misread, and the other one -- are</p> <p>9 you talking about the sentences or the</p> <p>10 things within the sentence? What are</p> <p>11 you talking about?</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. Go ahead and answer.</p> <p>14 A. Just to be sure about</p> <p>15 interpreting my answer, I interpret your</p> <p>16 question as being asking about the statements</p> <p>17 that I made in response to your questions.</p> <p>18 If I have that wrong, please</p> <p>19 let me know.</p> <p>20 Q. You say at paragraph 90, "As</p> <p>21 explained in the expert reports of Dr. Perri,</p> <p>22 Dr. Kessler and Dr. Egilman, the</p> <p>23 manufacturing defendants knew or should have</p> <p>24 known that they were making misleading</p> <p>25 statements about the safety and efficacy of</p>	<p>1 QUESTIONS BY MR. KEYES:</p> <p>2 Q. Then you say in the next</p> <p>3 paragraph that based on your own examination</p> <p>4 of publicly available documents and discovery</p> <p>5 produced in this litigation, "defendants had</p> <p>6 clear knowledge that the shipments had</p> <p>7 negative impacts on the public health and</p> <p>8 safety of communities across the nation,</p> <p>9 including in the bellwether communities."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Okay. Which defendants are you</p> <p>13 talking about there?</p> <p>14 MR. SOBOL: Objection. Scope.</p> <p>15 THE WITNESS: Well, I go on in</p> <p>16 this section to give, for example.</p> <p>17 QUESTIONS BY MR. KEYES:</p> <p>18 Q. Okay.</p> <p>19 A. And the "for example" refers to</p> <p>20 Purdue. And then additionally in the next</p> <p>21 paragraph I talk about Mallinckrodt. And</p> <p>22 then in the next paragraph I talk about</p> <p>23 Cardinal and McKesson.</p> <p>24 Q. Okay. So in the sentence that</p> <p>25 I just read to you from paragraph 91 where</p>

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<p>1 you talk about defendants having clear 2 knowledge, you're talking about those four 3 defendants? 4 MR. SOBOL: Objection. 5 Mischaracterizes the testimony. 6 THE WITNESS: No. 7 QUESTIONS BY MR. KEYES: 8 Q. You don't cite any evidence for 9 that statement other than the four examples 10 you just listed? 11 MR. SOBOL: Objection. 12 THE WITNESS: Well, when you 13 say "for example," it doesn't mean 14 you've listed the universe of 15 activities of something. 16 QUESTIONS BY MR. KEYES: 17 Q. In your report, do you list 18 anything other than the four examples you 19 just reviewed? 20 MR. SOBOL: Objection. 21 THE WITNESS: Examples of what? 22 QUESTIONS BY MR. KEYES: 23 Q. Do you cite any evidence as 24 support for your statement that I read to 25 you, other than the four you just listed:</p>	<p>1 public settlement of hundreds of 2 millions of dollars, that's something 3 that I would expect other similar 4 companies would have clear knowledge 5 of and understand. 6 QUESTIONS BY MR. KEYES: 7 Q. What did Purdue's 2007 8 settlement with the United States say about 9 Summit County? 10 A. I'm not sure. 11 Q. What did Purdue's 2007 12 settlement with the United States say about 13 Cuyahoga County? 14 A. I'm not sure. 15 Q. What did that settlement say 16 about negative impacts on the public health 17 and safety of Summit County or Cuyahoga 18 County? 19 MR. SOBOL: Objection. 20 THE WITNESS: I'm not sure. 21 QUESTIONS BY MR. KEYES: 22 Q. What did the Mallinckrodt 2017 23 settlement with DOJ say about Summit County 24 or Cuyahoga County? 25 MR. SOBOL: Objection.</p>
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<p>1 Purdue, Mallinckrodt, Cardinal and McKesson? 2 MR. SOBOL: Objection. 3 THE WITNESS: I believe I do. 4 QUESTIONS BY MR. KEYES: 5 Q. In this section, what other 6 evidence do you cite -- 7 A. In this -- 8 Q. -- as support for your 9 statement that, quote, "Defendants have clear 10 knowledge that the shipments had negative 11 impacts on the public health and safety of 12 communities across the nation, including in 13 the bellwether communities"? 14 MR. SOBOL: Objection. 15 THE WITNESS: I have two 16 answers to that question. 17 One is in other sections of my 18 report I discuss various public 19 documents that call attention to the 20 opioid crisis that are something that 21 defendants would have knowledge of. 22 And then the second answer to 23 the question is when a company like 24 Purdue, who I suppose we could call an 25 industry leader in opioids, has a</p>	<p>1 THE WITNESS: I'm not sure. 2 QUESTIONS BY MR. KEYES: 3 Q. What did the Mallinckrodt 2017 4 settlement with DOJ say about negative 5 impacts on the public health and safety of 6 Summit County or Cuyahoga County? 7 A. I'm not sure. 8 Q. What did the Cardinal 9 settlement agreement with DOJ say about 10 Summit County or Cuyahoga County? 11 A. I'm not sure. 12 Q. What did the Cardinal 13 settlement agreement with DOJ say about the 14 public health and safety of -- negative 15 impacts on the public health and safety of 16 Summit County or Cuyahoga County? 17 A. I'm not sure. 18 Q. What did the McKesson 19 settlement agreement with DOJ say about 20 Summit County or Cuyahoga County? 21 A. I'm not sure. 22 Q. What did the McKesson 23 settlement agreement with DOJ say about 24 negative impacts on the public health and 25 safety of Summit County or Cuyahoga County?</p>

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<p>1 MR. SOBOL: This is a lot of</p> <p>2 settlements.</p> <p>3 THE WITNESS: I'm not sure.</p> <p>4 QUESTIONS BY MR. KEYES:</p> <p>5 Q. That's the four settlements you</p> <p>6 reference in your report.</p> <p>7 So sitting here today, you</p> <p>8 don't know what any of them said about any</p> <p>9 public health impacts in Summit County or</p> <p>10 Cuyahoga County --</p> <p>11 MR. SOBOL: Objection.</p> <p>12 QUESTIONS BY MR. KEYES:</p> <p>13 Q. -- correct?</p> <p>14 MR. SOBOL: Objection. That's</p> <p>15 misleading -- I mean, misstates the</p> <p>16 testimony.</p> <p>17 THE WITNESS: I'm not sure what</p> <p>18 the degree to Summit and Cuyahoga were</p> <p>19 referred to in these settlements.</p> <p>20 MR. KEYES: Okay. Why don't we</p> <p>21 take a break.</p> <p>22 VIDEOGRAPHER: The time is</p> <p>23 3:09 p.m., and we're off the record.</p> <p>24 (Off the record at 3:09 p.m.)</p> <p>25 VIDEOGRAPHER: The time is</p>	<p>1 generally speaking, what information did you</p> <p>2 rely on in forming your opinion in</p> <p>3 paragraph 91 that defendants had clear</p> <p>4 knowledge that shipments had negative impacts</p> <p>5 on the public health and safety of</p> <p>6 communities across the nation, including the</p> <p>7 bellwether communities?</p> <p>8 A. Well, the material that I</p> <p>9 relied on is contained in this section,</p> <p>10 Section D, which is made up of several</p> <p>11 paragraphs.</p> <p>12 Q. So the material you're</p> <p>13 referring to are the four settlements that</p> <p>14 you describe in paragraphs 92 through 94?</p> <p>15 A. Well, as well as the expert</p> <p>16 reports.</p> <p>17 Q. What expert reports?</p> <p>18 A. Dr. Perri, Dr. Kessler and</p> <p>19 Dr. Egilman.</p> <p>20 Q. Anything else?</p> <p>21 A. Well, I also, I think in</p> <p>22 response to an earlier question, mentioned</p> <p>23 the -- in another section of the report</p> <p>24 discussion of public reports on the opioid</p> <p>25 crisis that would have fed into the knowledge</p>
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<p>1 3:23 p.m., and we're on the record.</p> <p>2 CROSS-EXAMINATION</p> <p>3 QUESTIONS BY MR. LONERGAN:</p> <p>4 Q. Good afternoon, Professor</p> <p>5 McGuire. My name is Sam Lonergan. I'm with</p> <p>6 the law firm Arnold & Porter Kaye Scholer. I</p> <p>7 represent defendants Endo and Par in this</p> <p>8 litigation.</p> <p>9 A. Good afternoon.</p> <p>10 Q. I'm going to do my best not to</p> <p>11 ask any of the questions that Mr. Keyes asked</p> <p>12 you, but he asked you a lot of questions over</p> <p>13 the last 12 hours or so, and I can make no</p> <p>14 guarantees.</p> <p>15 But I do want to circle back to</p> <p>16 an issue that you all were discussing right</p> <p>17 before we just took our last break, and that</p> <p>18 is the opinions at paragraphs 90 and 91 of</p> <p>19 your nuisance report.</p> <p>20 Do you recall that line of</p> <p>21 questioning?</p> <p>22 A. I will when I look at the --</p> <p>23 remind myself about the paragraphs.</p> <p>24 Yes.</p> <p>25 Q. What did you rely on --</p>	<p>1 that someone in the business would have about</p> <p>2 what's happening.</p> <p>3 Q. Anything else?</p> <p>4 A. That's all I can think of.</p> <p>5 Q. And are those answers the same</p> <p>6 if I'm asking you about the opinion you issue</p> <p>7 in paragraph 90 of your nuisance report where</p> <p>8 you say the manufacturing defendants knew or</p> <p>9 should have known that they were making</p> <p>10 misleading statements about the safety and</p> <p>11 efficacy of the prescription opioids they</p> <p>12 manufacture?</p> <p>13 A. Yes, it would.</p> <p>14 Q. You didn't rely on any other</p> <p>15 information for that opinion?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 THE WITNESS: Well, I noted</p> <p>18 this section and then made reference</p> <p>19 to the public reports, you know.</p> <p>20 QUESTIONS BY MR. LONERGAN:</p> <p>21 Q. Did you rely on any firsthand</p> <p>22 information that you have in forming either</p> <p>23 of those opinions?</p> <p>24 A. No, I would say not.</p> <p>25 Q. Do you believe a juror could</p>

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<p>1 reach the same opinions as you've reached in</p> <p>2 paragraph 90 and 91 of your nuisance report</p> <p>3 if they reviewed the same materials that you</p> <p>4 reviewed?</p> <p>5 MR. SOBOL: Objection. Scope.</p> <p>6 THE WITNESS: I'm not sure.</p> <p>7 QUESTIONS BY MR. LONERGAN:</p> <p>8 Q. Do you have any reason to</p> <p>9 believe that a juror could not reach those</p> <p>10 opinions reviewing those same materials?</p> <p>11 MR. SOBOL: Objection. Scope.</p> <p>12 THE WITNESS: I really don't</p> <p>13 know one way or the other.</p> <p>14 QUESTIONS BY MR. LONERGAN:</p> <p>15 Q. What expertise did you apply in</p> <p>16 reaching those opinions?</p> <p>17 A. Primarily it's relying on the</p> <p>18 very explicit statements of experts who are</p> <p>19 medical experts with respect to the</p> <p>20 manufacture and marketing of opioids. So</p> <p>21 it's, you know, directly from people who know</p> <p>22 about this that I drew my conclusions.</p> <p>23 And then I think the -- with</p> <p>24 respect to the other material referenced in</p> <p>25 this section, it's -- I don't know if you</p>	<p>1 sure what you're asking me to say,</p> <p>2 actually.</p> <p>3 QUESTIONS BY MR. LONERGAN:</p> <p>4 Q. Let's back up.</p> <p>5 The question I want an answer</p> <p>6 to is what expertise did you apply in</p> <p>7 reaching the opinions in paragraphs 90 and 91</p> <p>8 of your nuisance report?</p> <p>9 A. Okay. And I believe I answered</p> <p>10 that I relied on the expertise of the three</p> <p>11 named medical experts here.</p> <p>12 Q. Meaning you read their reports,</p> <p>13 right?</p> <p>14 A. Well, I read their reports and</p> <p>15 understood what their conclusions would be.</p> <p>16 Q. Okay.</p> <p>17 A. And then also made reference to</p> <p>18 two things: the studies discussed earlier in</p> <p>19 my report, and these prominent legal</p> <p>20 decisions that would have been known to</p> <p>21 members of the industry.</p> <p>22 Q. They're all materials you</p> <p>23 reviewed, right?</p> <p>24 A. Yes.</p> <p>25 Q. At what point did the</p>
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<p>1 need to be an economist. And you probably</p> <p>2 don't need to be an economist to say that,</p> <p>3 for example, in the case of Purdue, when</p> <p>4 there's a multi-hundred million dollar</p> <p>5 settlement that acknowledged misleading</p> <p>6 advertising, that that would reasonably have</p> <p>7 been known by other industry participants.</p> <p>8 Q. Are you done?</p> <p>9 A. Yeah.</p> <p>10 Q. So is what you're saying that</p> <p>11 if somebody can read the same materials that</p> <p>12 you read, that you think they could come to</p> <p>13 the same conclusions without any additional</p> <p>14 economic expertise that you may have? Is</p> <p>15 that correct?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 THE WITNESS: No, that's not</p> <p>18 what I said.</p> <p>19 QUESTIONS BY MR. LONERGAN:</p> <p>20 Q. What's wrong about what I said?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 He didn't say it was wrong.</p> <p>23 THE WITNESS: Well, I mean, I</p> <p>24 would ask somewhat different questions</p> <p>25 when I tried to answer them. I'm not</p>	<p>1 manufacturer defendants become aware that</p> <p>2 their marketing for opioids was misleading?</p> <p>3 MR. SOBOL: Objection. Hold on</p> <p>4 one second.</p> <p>5 It's been brought to my</p> <p>6 attention that there's apparently some</p> <p>7 limitation about follow-up questions,</p> <p>8 that they need to be specific to a</p> <p>9 manufacturer.</p> <p>10 Do I have that wrong?</p> <p>11 MR. HALLER: That's wrong.</p> <p>12 MR. LONERGAN: Why don't we go</p> <p>13 off the record. I don't want to waste</p> <p>14 time with this.</p> <p>15 VIDEOGRAPHER: The time is</p> <p>16 3:29 p.m., and we're off the record.</p> <p>17 (Off the record at 3:29 p.m.)</p> <p>18 VIDEOGRAPHER: The time is</p> <p>19 3:33, and we're on the record.</p> <p>20 QUESTIONS BY MR. LONERGAN:</p> <p>21 Q. Sir, at what point did the</p> <p>22 manufacturer defendants become aware that</p> <p>23 their marketing was misleading?</p> <p>24 MR. SOBOL: Objection. Scope.</p> <p>25 THE WITNESS: I'm not sure.</p>

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<p>1 QUESTIONS BY MR. LONERGAN: 2 Q. Is it the same date for each 3 defendant? 4 MR. SOBOL: Objection. Scope. 5 THE WITNESS: I'm not sure. 6 QUESTIONS BY MR. LONERGAN: 7 Q. Is it your opinion that each 8 marketing manufacturer -- each manufacturer 9 defendant was aware of what the other 10 defendants were aware of? 11 MR. SOBOL: Objection. Scope. 12 THE WITNESS: I'm not sure. 13 QUESTIONS BY MR. LONERGAN: 14 Q. At what point did my client, 15 Endo, become aware that its marketing was 16 misleading? 17 MR. SOBOL: Objection. Scope. 18 THE WITNESS: I'm not sure. 19 QUESTIONS BY MR. LONERGAN: 20 Q. When did you become aware of 21 the fact that the manufacturer defendants' 22 marketing for prescription opioids was 23 misleading? 24 MR. SOBOL: Objection. Scope. 25 THE WITNESS: I would say when</p>	<p>1 different editors. 2 And the assigned editor would 3 have been, you know, paying careful attention 4 to the paper at issue, but the editors who 5 were editors that were not assigned would not 6 necessarily have paid close attention. 7 Q. From 2001 to 2011, were you 8 ever an editor assigned to an article 9 concerning prescription opioids? 10 A. You know, I don't remember. 11 Q. You're no longer affiliated 12 with the Journal of Health Economics? 13 A. I may be an associate editor. 14 I'm a subscriber. 15 Q. You consider it to be a 16 reputable journal? 17 A. I do, yes. 18 Q. Trustworthy? 19 A. Yes. 20 Q. And so the information that it 21 publishes you would expect to be accurate, 22 correct? 23 A. Well, there's a process by 24 which authors submit; it's reviewed by 25 reviewers; editors help make a determination.</p>
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<p>1 I -- it was within the time period of 2 this report, of my work on this 3 report. 4 QUESTIONS BY MR. LONERGAN: 5 Q. You mean since you started 6 working on this report in May of 2018? 7 A. Yes. 8 Q. You were the editor of the 9 Journal of Health Economics from 2001 to 10 2011, right? 11 A. That's correct. 12 Q. And during the period -- during 13 that period of time, is it correct that the 14 Journal of Health Economics published a 15 number of articles concerning prescription 16 opioids? 17 A. Probably correct, yes. 18 Q. And as the editor of that 19 journal, did you familiarize yourself at that 20 time with those publications? 21 A. No, not necessarily. There 22 were numerous editors during that time 23 period, at least three, and the way the 24 editorial process worked was there was a kind 25 of delegation of different articles to</p>	<p>1 So the editorial staff does its best to make 2 sure that the papers are accurate and 3 reliable, which is not to say that there 4 aren't sometimes things that are incorrect in 5 the papers. 6 Q. For the most part, your 7 expectation is that articles published in the 8 Journal of Health Economics are accurate, 9 correct? 10 MR. SOBOL: Objection. 11 THE WITNESS: Well, subject to 12 my previous answer that -- I'm not 13 sure what "for the most part is," but 14 the editorial staff does its best to 15 make sure things are accurate. 16 QUESTIONS BY MR. LONERGAN: 17 Q. Well, "for the most part" was 18 really me responding to you, and you're 19 waffling a little. 20 I guess what percentage of 21 articles published by the Journal of Health 22 Economics do you think are accurate? 23 MR. SOBOL: Objection to the 24 statement. 25 But you can answer the</p>

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<p>1 question.</p> <p>2 THE WITNESS: It's an odd</p> <p>3 question. I know, I'll answer it</p> <p>4 anyway.</p> <p>5 It's not so much that articles</p> <p>6 are accurate or inaccurate, but</p> <p>7 sometimes statements within articles</p> <p>8 are accurate or inaccurate.</p> <p>9 I'm sure all articles have some</p> <p>10 accurate stuff and, you know, some</p> <p>11 articles have some inaccurate stuff.</p> <p>12 It's really impossible for me to put a</p> <p>13 percentage on.</p> <p>14 QUESTIONS BY MR. LONERGAN:</p> <p>15 Q. Do you agree that there's been</p> <p>16 a significant number of articles concerning</p> <p>17 opioid addiction that have been published in</p> <p>18 any journal dating back to the 1960s?</p> <p>19 A. In any journal?</p> <p>20 Q. Yeah.</p> <p>21 A. I'm sure there have been</p> <p>22 research papers on it. I'm not sure what you</p> <p>23 mean by "significant" in this context, but...</p> <p>24 Q. Well, do you agree that there</p> <p>25 have been articles published dating back to</p>	<p>1 term, negative impact on the public health</p> <p>2 and safety, correct?</p> <p>3 MR. SOBOL: Objection.</p> <p>4 THE WITNESS: I'm not aware</p> <p>5 when Endo would have become aware of</p> <p>6 that.</p> <p>7 QUESTIONS BY MR. LONERGAN:</p> <p>8 Q. In reaching the opinions set</p> <p>9 forth in paragraphs 90 and 91 of your</p> <p>10 nuisance report, did you make any assessment</p> <p>11 of what other non-defendant participants in</p> <p>12 the prescription drug market knew concerning</p> <p>13 misleading marketing of prescription opioids?</p> <p>14 A. No.</p> <p>15 Q. Did you make an assessment of</p> <p>16 what other non-defendant participants in the</p> <p>17 opioid prescription drug market knew</p> <p>18 concerning the negative impacts on public</p> <p>19 health and safety?</p> <p>20 A. It was the same. I didn't</p> <p>21 investigate what non-defendants would have</p> <p>22 known or not known.</p> <p>23 Q. You didn't make an assessment</p> <p>24 of what the FDA knew about those things and</p> <p>25 when?</p>
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<p>1 the 1960s concerning the risks of addiction</p> <p>2 associated with prescription opioids?</p> <p>3 MR. SOBOL: Objection.</p> <p>4 THE WITNESS: There may well</p> <p>5 be. You know, I couldn't name -- name</p> <p>6 them for you.</p> <p>7 QUESTIONS BY MR. LONERGAN:</p> <p>8 Q. It's not something you</p> <p>9 familiarized yourself with for purposes of</p> <p>10 your work on this case, correct?</p> <p>11 A. No, this is -- that's something</p> <p>12 I relied on medical experts for.</p> <p>13 Q. When did the defendants become</p> <p>14 aware of the fact that the shipments was</p> <p>15 having a negative impact on public health and</p> <p>16 safety?</p> <p>17 A. I'm not sure.</p> <p>18 Q. Is it the same for each</p> <p>19 defendant?</p> <p>20 A. In the sense that, yes -- yes,</p> <p>21 I would not be sure for each defendant when</p> <p>22 they became aware.</p> <p>23 Q. So you don't know when my</p> <p>24 client, Endo, became aware that its shipments</p> <p>25 of prescription opioids was having a, in your</p>	<p>1 MR. SOBOL: Objection. Scope.</p> <p>2 THE WITNESS: I'm not privy to</p> <p>3 what the FDA knew and when.</p> <p>4 QUESTIONS BY MR. LONERGAN:</p> <p>5 Q. You didn't make an assessment</p> <p>6 of what PBMs knew about those things and</p> <p>7 when?</p> <p>8 A. It would be the same.</p> <p>9 Q. You didn't make an assessment</p> <p>10 of what prescription opioid patients knew</p> <p>11 about those things and when?</p> <p>12 MR. SOBOL: Objection.</p> <p>13 QUESTIONS BY MR. LONERGAN:</p> <p>14 Q. Correct?</p> <p>15 A. These are things I didn't</p> <p>16 study.</p> <p>17 Q. You didn't make an assessment</p> <p>18 of when prescribing physicians became aware</p> <p>19 of the risks associated with prescription</p> <p>20 opioids and when, correct?</p> <p>21 MR. SOBOL: Objection.</p> <p>22 THE WITNESS: Well, that's also</p> <p>23 something I didn't study.</p> <p>24 QUESTIONS BY MR. LONERGAN:</p> <p>25 Q. Did you study when Summit</p>

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<p>1 County became aware of misleading marketing</p> <p>2 concerning prescription opioids?</p> <p>3 MR. SOBOL: Objection. Scope.</p> <p>4 THE WITNESS: No, I didn't</p> <p>5 study that.</p> <p>6 QUESTIONS BY MR. LONERGAN:</p> <p>7 Q. Do you have an opinion on when</p> <p>8 that was?</p> <p>9 MR. SOBOL: Objection. Scope.</p> <p>10 THE WITNESS: I didn't study</p> <p>11 it.</p> <p>12 QUESTIONS BY MR. LONERGAN:</p> <p>13 Q. Did you study when Cuyahoga</p> <p>14 County became aware of prescription opioid</p> <p>15 misleading marketing?</p> <p>16 MR. SOBOL: Objection. Scope.</p> <p>17 THE WITNESS: I didn't study</p> <p>18 that.</p> <p>19 QUESTIONS BY MR. LONERGAN:</p> <p>20 Q. Do you have an opinion on when</p> <p>21 Cuyahoga County became aware of the</p> <p>22 misleading marketing?</p> <p>23 MR. SOBOL: Objection. Scope.</p> <p>24 THE WITNESS: I didn't study</p> <p>25 that.</p>	<p>1 QUESTIONS BY MR. LONERGAN:</p> <p>2 Q. Sir, yesterday you were asked a</p> <p>3 couple of questions about -- I'm sorry, last</p> <p>4 week you were asked --</p> <p>5 A. That's what I thought you</p> <p>6 meant.</p> <p>7 Q. I don't know where you were</p> <p>8 yesterday.</p> <p>9 MR. SOBOL: He said last month.</p> <p>10 MR. LONERGAN: Strike</p> <p>11 everything I just said, and him.</p> <p>12 MR. SOBOL: Certainly mine.</p> <p>13 QUESTIONS BY MR. LONERGAN:</p> <p>14 Q. Last week you were asked a few</p> <p>15 questions about prior consulting work that</p> <p>16 you've done for manufacturers, I think,</p> <p>17 manufacturers and maybe wholesalers.</p> <p>18 I've only had a chance to</p> <p>19 review the rough transcript of that</p> <p>20 deposition, and it's a little fuzzy. No</p> <p>21 offense.</p> <p>22 A. It was somebody else. She</p> <p>23 wasn't here.</p> <p>24 Q. So you can object as asked and</p> <p>25 answered, but I'm going to circle back.</p>
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<p>1 QUESTIONS BY MR. LONERGAN:</p> <p>2 Q. Did you study when Summit or</p> <p>3 Cuyahoga County became aware of the negative</p> <p>4 impacts that prescription opioids were having</p> <p>5 on the public health and safety?</p> <p>6 MR. SOBOL: Objection. Scope.</p> <p>7 THE WITNESS: I also did not</p> <p>8 study that.</p> <p>9 QUESTIONS BY MR. LONERGAN:</p> <p>10 Q. Is it correct that you do not</p> <p>11 know when Summit or Cuyahoga County became</p> <p>12 aware of the negative impacts on public</p> <p>13 health and safety?</p> <p>14 MR. SOBOL: Objection. Scope.</p> <p>15 THE WITNESS: I didn't study</p> <p>16 that.</p> <p>17 QUESTIONS BY MR. LONERGAN:</p> <p>18 Q. Do you have any reason to</p> <p>19 disagree with the follow statements: Medical</p> <p>20 professionals have known for a long time that</p> <p>21 opioids are addictive?</p> <p>22 MR. SOBOL: Objection. Scope.</p> <p>23 THE WITNESS: I -- no, I have</p> <p>24 no reason to agree or disagree.</p> <p>25</p>	<p>1 Have you ever consulted for a</p> <p>2 pharmaceutical manufacturer?</p> <p>3 A. Yes.</p> <p>4 Q. What manufacturer?</p> <p>5 A. There were a couple of one-day</p> <p>6 consultancies that I engaged in some time</p> <p>7 ago. One of them I remember was at Johns</p> <p>8 Hopkins. It had to do with schizophrenia</p> <p>9 drugs, but I don't remember the manufacturer</p> <p>10 involved for that.</p> <p>11 The other was I think in</p> <p>12 Chicago, and it was convened by someone</p> <p>13 interested in using claims-like data for</p> <p>14 marketing purposes to assess potential sales</p> <p>15 of a drug by -- I don't remember the drug and</p> <p>16 I don't remember the manufacturer. It was</p> <p>17 about the methodology that one could use with</p> <p>18 respect to that.</p> <p>19 Q. And do you recall how you</p> <p>20 advised that nameless manufacturer about how</p> <p>21 claims data could be used to conduct analyses</p> <p>22 concerning sales?</p> <p>23 A. I don't remember.</p> <p>24 Q. And do you recall what you were</p> <p>25 brought in to consult on concerning the</p>

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<p style="text-align: right;">Page 749</p> <p>1 schizophrenia drug?</p> <p>2 A. Sorry, I don't remember.</p> <p>3 Q. What about pharmacies? Have</p> <p>4 you ever consulted for a pharmacy?</p> <p>5 A. No, I have not.</p> <p>6 Q. Have you ever consulted for a</p> <p>7 wholesaler?</p> <p>8 A. Wholesalers may have been in a</p> <p>9 class in something I was involved in, but</p> <p>10 never directly with a wholesaler.</p> <p>11 Q. You mean they may have been in</p> <p>12 a class of plaintiffs --</p> <p>13 A. Yes.</p> <p>14 Q. -- in a litigation you were</p> <p>15 consulting on?</p> <p>16 A. Yes.</p> <p>17 Q. Outside of the litigation</p> <p>18 context, have you ever consulted for a</p> <p>19 wholesaler?</p> <p>20 A. No, I haven't.</p> <p>21 Q. Have you ever consulted for an</p> <p>22 insurer?</p> <p>23 A. Yes.</p> <p>24 Q. What insurer?</p> <p>25 A. Well, many. Many. You know,</p>	<p style="text-align: right;">Page 751</p> <p>1 about, something that I study, and I get</p> <p>2 asked about that and I give my opinion on</p> <p>3 that.</p> <p>4 Q. Have you ever advised an</p> <p>5 insurer concerning their coverage of</p> <p>6 prescription opioids?</p> <p>7 A. No, I don't think I have.</p> <p>8 Q. Have you ever consulted for a</p> <p>9 pharmacy benefits manager?</p> <p>10 A. No, I never have.</p> <p>11 Q. You're familiar with what a</p> <p>12 pharmacy benefits manager is?</p> <p>13 A. Yes.</p> <p>14 Q. What is a pharmacy benefits</p> <p>15 manager?</p> <p>16 A. It would be a specialized firm</p> <p>17 that takes responsibility for managing a</p> <p>18 pharmacy benefit.</p> <p>19 So what benefit means in this</p> <p>20 context as part of a health insurance</p> <p>21 benefit, that there might be a, you know,</p> <p>22 single large insurer that has responsibility</p> <p>23 for the overall picture but then writes</p> <p>24 contracts with specialized firms, of which a</p> <p>25 PBM, or a pharmacy benefit manager, is one,</p>
<p style="text-align: right;">Page 750</p> <p>1 my main line of work -- or one of my main</p> <p>2 lines of work is health insurance, health</p> <p>3 plan payment, health insurance payment</p> <p>4 design. So I think you wouldn't want to go</p> <p>5 through my CV and hear all these.</p> <p>6 MR. SOBOL: I would.</p> <p>7 QUESTIONS BY MR. LONERGAN:</p> <p>8 Q. In general terms, when you're</p> <p>9 advising an insurer concerning their health</p> <p>10 insurance payment design, what types of</p> <p>11 things are you advising them on?</p> <p>12 A. It would be within the realm of</p> <p>13 the parameters that they set in their</p> <p>14 coverage. You know, something very simple</p> <p>15 and straightforward would be the degree of</p> <p>16 coverage for mental health and substance</p> <p>17 abuse treatment. I might advise them on what</p> <p>18 the cost implications would be of doing so.</p> <p>19 Q. Do you ever provide them with</p> <p>20 advice concerning the clinical implications?</p> <p>21 A. Well, in the sense that</p> <p>22 coverage for something like mental health</p> <p>23 care has implications not just for cost but</p> <p>24 also for the health and mental health of the</p> <p>25 enrollees. And this is something that I know</p>	<p style="text-align: right;">Page 752</p> <p>1 but there are other types of these</p> <p>2 specialized firms, and either on a cost or a</p> <p>3 risk basis or some kind of combination of a</p> <p>4 cost and a risk basis, makes a contract with</p> <p>5 a PBM.</p> <p>6 And then the PBM has the</p> <p>7 responsibility for helping the client select</p> <p>8 the drugs on the -- to be offered in the</p> <p>9 formulary, would have responsibility to share</p> <p>10 with a client of the tiering and the cost</p> <p>11 responsibility of the enrollees, and would be</p> <p>12 responsible for doing negotiation with</p> <p>13 manufacturers around procurement of the drugs</p> <p>14 for the client, as well as conducting some</p> <p>15 utilization management activities that might</p> <p>16 influence actual drug utilization.</p> <p>17 Q. And a PBM's customers, are</p> <p>18 those insurers, either insurance companies or</p> <p>19 self-insured entities?</p> <p>20 A. That would be generally</p> <p>21 accurate, yes.</p> <p>22 Q. Okay. And what is a</p> <p>23 self-insured employer?</p> <p>24 A. Self-insured refers to the --</p> <p>25 the practice of an employer who in simple</p>

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<p>1 terms pays claims directly. Now that's kind 2 of a simplification. 3 They may contract with a 4 third-party administrator to actually receive 5 the bills, maybe help negotiate the prices 6 for the services, maybe even decide the 7 network of different providers that would be 8 available to a firm's employees. 9 So the TPA would be responsible 10 for some part of the -- you know, in a 11 broader sense the design of the benefit. 12 But then the cost risk 13 associated with that, when you say 14 self-insurance, that falls on the employer. 15 One more quick sentence about 16 this. It's not always a black and white 17 world in which all the risk is with the 18 insurer, all the risk is with the employer. 19 It's often a shared risk situation. 20 Q. And a self-insured employer 21 and/or an insurance company, is it correct 22 that they rely on a PBM to administer the 23 pharmacy benefits for their covered lives? 24 A. Well, they'll partially rely on 25 a PBM, yes. It wouldn't be entirely.</p>	<p>1 Q. Would you consider that 2 significant? 3 MR. SOBOL: Objection. 4 THE WITNESS: That's a pretty 5 big number, yeah. That's why we pay 6 attention to these in my work. 7 QUESTIONS BY MR. LONERGAN: 8 Q. I know we had the back and 9 forth on what significant meant before. I'm 10 just wondering if that's significant. 11 A. Yeah, that meets my criteria. 12 Q. Have you had the opportunity to 13 examine Summit County and Cuyahoga 14 County's -- 15 A. This has nothing to do with 16 you. Sorry. There was just something in my 17 water. We're going to put this right over 18 here. 19 MR. SOBOL: I think it's 20 swimming the backstroke. 21 THE WITNESS: Sorry. 22 MR. LONERGAN: It's quite all 23 right. 24 QUESTIONS BY MR. LONERGAN: 25 Q. Have you had a chance to review</p>
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<p>1 Q. Would that be the norm? 2 MR. SOBOL: Objection. 3 THE WITNESS: Well, if you -- 4 you may not even choose to use a PBM, 5 for example. You may self-administer 6 your benefit, which a number of 7 insurers do. 8 So PBMs are, number one, 9 optional. And then the nature of the 10 PBM contract and what your -- what you 11 decide about as an employer or an 12 insurer can vary by PBM and it can 13 vary by contract within the PBM. So 14 it's hard to generalize. 15 QUESTIONS BY MR. LONERGAN: 16 Q. Do you have a sense of 17 approximately how many people in the United 18 States today receive their pharmacy benefits 19 through a PBM? 20 A. A very large number. 21 Q. Do you have a sense of what 22 percentage of the country it is? 23 A. Percentage of the country? Oh, 24 I don't know. Of the number of people in the 25 country, maybe 70 percent or 80 percent.</p>	<p>1 how Summit County and Cuyahoga County's 2 insurance plans work for their covered county 3 employees? 4 A. Yes, generally. 5 Q. And do they both rely on the 6 services of a PBM? 7 A. You know, I don't know that I 8 examined that aspect of it. 9 Q. What aspect of it did you 10 examine? 11 A. I was -- first of all, my 12 understanding is there's more than one 13 involved in each of the counties, more than 14 one insurer involved, depending -- and they 15 cover different -- 16 Q. Presently or historically? 17 A. Certainly historically, and 18 there could have even been some years where 19 there was more than one active in any one 20 year. 21 I was more interested when I 22 looked at this stuff in the self-insured 23 versus risk-based contracting. 24 Q. And what did you find? 25 A. It's a mix.</p>

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<p style="text-align: right;">Page 757</p> <p>1 Q. What do you mean by that?</p> <p>2 A. Huh?</p> <p>3 Q. What do you mean by that?</p> <p>4 A. I mean there are some of both,</p> <p>5 and even within contracts that are labeled</p> <p>6 self-insured, there's some risk, sure.</p> <p>7 Q. Did you have an opportunity to</p> <p>8 review any of the counties' contracts that</p> <p>9 they've entered into with PBMs?</p> <p>10 A. I don't recall. I don't think</p> <p>11 so.</p> <p>12 Q. Would it surprise you to learn</p> <p>13 that those contracts gave the counties the</p> <p>14 ultimate right to make determinations</p> <p>15 concerning the formulary for the covered</p> <p>16 patients?</p> <p>17 MR. SOBOL: Objection.</p> <p>18 THE WITNESS: Yeah, as I said</p> <p>19 when we were discussing this more</p> <p>20 generally, the division of labor</p> <p>21 between what a PBM decides and what an</p> <p>22 employer, in this case the county</p> <p>23 government, decides is not fixed in</p> <p>24 stone, and it varies across different</p> <p>25 contractual arrangements. So, no, it</p>	<p style="text-align: right;">Page 759</p> <p>1 Q. How about medical ethicists?</p> <p>2 A. Medical ethicists? There may</p> <p>3 well be. Some probably have, and some</p> <p>4 probably don't.</p> <p>5 Q. I think you already said this,</p> <p>6 but in your experience both PBMs and insurers</p> <p>7 typically have P & T committees; is that</p> <p>8 correct?</p> <p>9 A. That's what I said, yes.</p> <p>10 Q. And what types of information</p> <p>11 do P & T committees typically rely on when</p> <p>12 evaluating a drug or a class of drugs?</p> <p>13 A. They are -- typically evaluate</p> <p>14 evidence that they find in their research</p> <p>15 literature on -- mostly on effectiveness.</p> <p>16 Q. So they review medical</p> <p>17 literature; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Do they review FDA-approved</p> <p>20 product labels?</p> <p>21 A. Yes, I think they do.</p> <p>22 Q. Do they, in your experience,</p> <p>23 review proprietary data concerning their</p> <p>24 customers' use of products?</p> <p>25 MR. SOBOL: Objection.</p>
<p style="text-align: right;">Page 758</p> <p>1 wouldn't surprise me.</p> <p>2 QUESTIONS BY MR. LONERGAN:</p> <p>3 Q. Are you familiar with the term</p> <p>4 "pharmacy and therapeutics committee"?</p> <p>5 A. Yes, I am.</p> <p>6 Q. Otherwise known as a P & T</p> <p>7 committee?</p> <p>8 A. Yes.</p> <p>9 Q. What is a P & T committee?</p> <p>10 A. A P & T would be a committee</p> <p>11 that's part of either a PBM or perhaps an</p> <p>12 insurer that makes recommendations regarding</p> <p>13 the formulary coverage of alternative drug</p> <p>14 products.</p> <p>15 Q. Have you ever served on a P & T</p> <p>16 committee?</p> <p>17 A. No, I never have.</p> <p>18 Q. Do you know what types of</p> <p>19 professionals typically serve on a P & T</p> <p>20 committee?</p> <p>21 A. Generally, yes.</p> <p>22 Q. What types of professionals?</p> <p>23 A. There would be physicians, of</p> <p>24 course, of different types. There would be</p> <p>25 pharmacists.</p>	<p style="text-align: right;">Page 760</p> <p>1 THE WITNESS: You see, in my</p> <p>2 experience, I didn't mean to imply a</p> <p>3 personal experience with a P & T</p> <p>4 committee.</p> <p>5 My knowledge about this comes</p> <p>6 from my work on health plans and my</p> <p>7 knowledge about that.</p> <p>8 And then do they what? I'm</p> <p>9 sorry.</p> <p>10 QUESTIONS BY MR. LONERGAN:</p> <p>11 Q. Rely on their proprietary</p> <p>12 data --</p> <p>13 A. Proprietary data?</p> <p>14 Q. -- concerning their customers'</p> <p>15 use of pharmaceuticals.</p> <p>16 MR. SOBOL: Objection.</p> <p>17 THE WITNESS: I'm not sure.</p> <p>18 QUESTIONS BY MR. LONERGAN:</p> <p>19 Q. Okay. How about clinical</p> <p>20 guidelines? Do P & T committees rely on</p> <p>21 clinical guidelines in making assessments of</p> <p>22 pharmaceuticals or classes of</p> <p>23 pharmaceuticals?</p> <p>24 A. Clinical guidelines, published</p> <p>25 clinical guidelines, would be part of the</p>

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<p>1 research literature.</p> <p>2 Q. What is a formulary?</p> <p>3 A. A formulary is a listing of</p> <p>4 pharmaceutical products that are eligible for</p> <p>5 some coverage in a particular health</p> <p>6 insurance plan.</p> <p>7 It typically would have, say,</p> <p>8 three tiers, in which tier 1 is typically</p> <p>9 generic tier, and that's where the copayment</p> <p>10 obligations of the enrollees are the least.</p> <p>11 You know, just, for example, it might be \$10</p> <p>12 would be the co-pay on tier 1.</p> <p>13 Tier 2 would be typically</p> <p>14 the -- what would be called preferred brand</p> <p>15 drugs for which there would be some coverage,</p> <p>16 but the coverage would be not -- would</p> <p>17 require more than a \$10 co-pay. Maybe, say,</p> <p>18 a \$25 co-pay.</p> <p>19 And then a third tier would be</p> <p>20 typically referred to as nonpreferred brand</p> <p>21 drugs. These would have some coverage but</p> <p>22 even higher rates of co-pay.</p> <p>23 And there may be some products</p> <p>24 that aren't even on the formulary. So it's</p> <p>25 not -- you know, all drugs aren't classified</p>	<p>1 drug formularies an effective means of</p> <p>2 influencing patient behavior concerning</p> <p>3 selection of prescription pharmaceuticals?</p> <p>4 MR. SOBOL: Objection. Scope.</p> <p>5 THE WITNESS: It's not</p> <p>6 something I studied here.</p> <p>7 QUESTIONS BY MR. LONERGAN:</p> <p>8 Q. So you don't know?</p> <p>9 A. Well, it's not something I</p> <p>10 studied.</p> <p>11 MR. SOBOL: Objection. Scope.</p> <p>12 QUESTIONS BY MR. LONERGAN:</p> <p>13 Q. No, I understand, but -- and</p> <p>14 I'm not asking if you studied it here. I'm</p> <p>15 asking you, in your experience and given that</p> <p>16 you're a health care economist, are drug</p> <p>17 formularies an effective means of influencing</p> <p>18 patient behavior with respect to the</p> <p>19 selection of prescription pharmaceuticals?</p> <p>20 MR. SOBOL: Objection. Scope.</p> <p>21 THE WITNESS: Well, it's part</p> <p>22 of the intention of formularies to</p> <p>23 influence not just patients but to</p> <p>24 influence doctors in what they</p> <p>25 recommend. And, yes, formularies can</p>
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<p>1 in all tiers, and formularies may well have</p> <p>2 more than one -- many have more than three</p> <p>3 tiers, some of them have one tier. So</p> <p>4 there's a range of arrangements.</p> <p>5 Q. And in your work consulting for</p> <p>6 health insurance companies, have you worked</p> <p>7 with them to devise strategies concerning</p> <p>8 formularies?</p> <p>9 A. I'm just thinking. No, I don't</p> <p>10 think I have.</p> <p>11 Q. Okay. In your experience, do</p> <p>12 PBMs and insurers typically employ</p> <p>13 formularies for the customers they're</p> <p>14 serving?</p> <p>15 A. Yes.</p> <p>16 Q. Have you had the opportunity to</p> <p>17 review or examine the role that formularies</p> <p>18 may have played in connection with the use of</p> <p>19 prescription opioids?</p> <p>20 MR. SOBOL: Objection.</p> <p>21 THE WITNESS: Well, not beyond</p> <p>22 my general understanding of how</p> <p>23 formularies work.</p> <p>24 QUESTIONS BY MR. LONERGAN:</p> <p>25 Q. Okay. In your experience, are</p>	<p>1 affect selection of drugs.</p> <p>2 QUESTIONS BY MR. LONERGAN:</p> <p>3 Q. And given that you haven't</p> <p>4 examined the role of formularies with respect</p> <p>5 to prescription opioids, you have no basis</p> <p>6 upon which to opine that that was not the</p> <p>7 case with respect to prescription opioids,</p> <p>8 correct?</p> <p>9 MR. SOBOL: Objection. Scope.</p> <p>10 THE WITNESS: There's a couple</p> <p>11 of negatives in there. I'm sorry. If</p> <p>12 you don't mind, you can ask it again.</p> <p>13 I'll get it the second time.</p> <p>14 MR. LONERGAN: I'll do my best.</p> <p>15 QUESTIONS BY MR. LONERGAN:</p> <p>16 Q. Given that you haven't examined</p> <p>17 the role of formularies with respect to</p> <p>18 prescription opioids, you have no basis upon</p> <p>19 which to opine that formularies were not</p> <p>20 effective in influencing the behavior of</p> <p>21 patients with respect to prescription</p> <p>22 opioids, correct?</p> <p>23 MR. SOBOL: Objection. Scope.</p> <p>24 THE WITNESS: That's something</p> <p>25 I didn't study.</p>

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<p>1 QUESTIONS BY MR. LONERGAN:</p> <p>2 Q. So --</p> <p>3 A. However, the negative or</p> <p>4 positives work out there.</p> <p>5 Q. So you have no basis upon which</p> <p>6 to have an opinion one way or the other on</p> <p>7 the influence of formularies on the use of</p> <p>8 prescription opioids, right?</p> <p>9 MR. SOBOL: Objection. Scope.</p> <p>10 THE WITNESS: I didn't study</p> <p>11 that.</p> <p>12 QUESTIONS BY MR. LONERGAN:</p> <p>13 Q. Okay. Outside of formularies,</p> <p>14 PBMs and insurers also employ utilization</p> <p>15 management tools to influence patient</p> <p>16 behavior, correct?</p> <p>17 A. That's correct.</p> <p>18 MR. SOBOL: Objection. Scope.</p> <p>19 THE WITNESS: I think I</p> <p>20 mentioned that earlier.</p> <p>21 QUESTIONS BY MR. LONERGAN:</p> <p>22 Q. I think you did.</p> <p>23 I just want to be a little more</p> <p>24 specific about what a utilization management</p> <p>25 tool is.</p>	<p>1 an alternative, there would be some</p> <p>2 conditions under which a patient could move</p> <p>3 from step 1 to step 2.</p> <p>4 Q. Have you studied the</p> <p>5 effectiveness of step therapy protocols in</p> <p>6 influencing patient behavior?</p> <p>7 A. No, I haven't.</p> <p>8 Q. What about prior authorization,</p> <p>9 is that a utilization management tool?</p> <p>10 A. Yes, it is.</p> <p>11 Q. And what is prior</p> <p>12 authorization?</p> <p>13 A. Prior authorization refers to</p> <p>14 another protocol that a PBM or insurer might</p> <p>15 use to require that before a service is</p> <p>16 delivered to a patient, which could be some</p> <p>17 kind of physician procedure or a</p> <p>18 hospitalization or, in this case,</p> <p>19 pharmaceuticals, a call needs to be made to</p> <p>20 someone from the insurer, from the PBM, to</p> <p>21 authorize the coverage for that service or</p> <p>22 product.</p> <p>23 Q. Earlier today I think you</p> <p>24 testified that PBMs won't know why a patient</p> <p>25 is receiving a prescription opioid because</p>
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<p>1 Is a quantity limit, in your</p> <p>2 mind, a utilization management tool?</p> <p>3 A. That would be an example of a</p> <p>4 utilization management tool.</p> <p>5 Q. And what is a quantity limit?</p> <p>6 A. It would be a -- you know, kind</p> <p>7 of rule that a PBM might administer to say</p> <p>8 that there's a maximum number of, say, pills</p> <p>9 that would be covered under the formulary.</p> <p>10 Q. And in your experience, are</p> <p>11 quantity limits typically effective at</p> <p>12 influencing patient behavior with respect to</p> <p>13 prescription drugs generally?</p> <p>14 A. I've never explicitly studied</p> <p>15 quantity limits.</p> <p>16 Q. Okay. How about step therapy?</p> <p>17 Is that a utilization management tool?</p> <p>18 A. Yes, it is.</p> <p>19 Q. What is step therapy?</p> <p>20 A. Step therapy refers to another</p> <p>21 kind of protocol that a PBM would implement</p> <p>22 that says step 1 might be where a patient</p> <p>23 with a certain health condition is required</p> <p>24 to start in terms of treatment.</p> <p>25 And then to get step 2 to go in</p>	<p>1 they don't receive the diagnosis; is that</p> <p>2 correct?</p> <p>3 A. That's -- generally, that's</p> <p>4 correct.</p> <p>5 Q. If prior authorization were</p> <p>6 required for the distribution or dispensation</p> <p>7 of a prescription opioid, you'd agree in that</p> <p>8 instance a PBM or an insurer would be</p> <p>9 well-aware of the diagnosis code, correct?</p> <p>10 A. Well, I think that's, you know,</p> <p>11 a different mechanism than getting a claim.</p> <p>12 And if you ask me in general terms what</p> <p>13 happens during prior authorization, someone</p> <p>14 familiar with the medical condition of the</p> <p>15 patient would make a call and explain the</p> <p>16 reasons why this product were needed, and it</p> <p>17 would include a description of the health --</p> <p>18 you know, what is the basis of the health</p> <p>19 needs of the patient.</p> <p>20 Q. Do you know the extent to which</p> <p>21 any of these utilization management tools,</p> <p>22 quantity limits, step therapy or prior</p> <p>23 authorization, were employed historically in</p> <p>24 connection with the prescription opioids?</p> <p>25 MR. SOBOL: Objection. Scope.</p>

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<p>1 Go ahead.</p> <p>2 THE WITNESS: I didn't study</p> <p>3 that.</p> <p>4 QUESTIONS BY MR. LONERGAN:</p> <p>5 Q. So you don't know?</p> <p>6 MR. SOBOL: Objection. Scope.</p> <p>7 THE WITNESS: I didn't study</p> <p>8 it.</p> <p>9 QUESTIONS BY MR. LONERGAN:</p> <p>10 Q. Do you have any reason to</p> <p>11 believe that these utilization management</p> <p>12 tools were not available to be employed by</p> <p>13 PBMs or insurers with respect to prescription</p> <p>14 opioids?</p> <p>15 MR. SOBOL: Objection. Scope.</p> <p>16 THE WITNESS: I don't really</p> <p>17 have any reason to believe one way or</p> <p>18 the other.</p> <p>19 QUESTIONS BY MR. LONERGAN:</p> <p>20 Q. Are you familiar with the NCPDP</p> <p>21 protocol? NCPDP standing for National</p> <p>22 Council of Prescription Drug Programs.</p> <p>23 A. I'm not familiar with that.</p> <p>24 Q. Okay. Are you familiar with</p> <p>25 how pharmacies communicate with PBMs and</p>	<p>1 is --</p> <p>2 QUESTIONS BY MR. LONERGAN:</p> <p>3 Q. Okay. He will tell you not to</p> <p>4 guess, but...</p> <p>5 A. The pharmacy would communicate</p> <p>6 electronically with the PBM or the health</p> <p>7 insurer about the -- who is being --</p> <p>8 requested the prescription on behalf of whom,</p> <p>9 that is, what patient, possibly the doctor,</p> <p>10 and what the prescription -- what the</p> <p>11 prescription is.</p> <p>12 Q. Is any other information</p> <p>13 transferred at that time?</p> <p>14 A. There may be.</p> <p>15 Q. You don't know?</p> <p>16 A. That's -- I told you what I</p> <p>17 know.</p> <p>18 Q. Okay. And you don't know what</p> <p>19 protocol is used for that communication,</p> <p>20 correct?</p> <p>21 A. I'm sorry, by "protocol" you</p> <p>22 mean electronic something or the other?</p> <p>23 Q. You've already testified you</p> <p>24 don't know what the NCPDP protocol is, so I</p> <p>25 probably don't need to ask that question.</p>
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<p>1 insurers in connection with the distribution</p> <p>2 of prescription drugs?</p> <p>3 MR. SOBOL: Objection. Scope.</p> <p>4 THE WITNESS: Well, in some</p> <p>5 ways I'm generally familiar.</p> <p>6 QUESTIONS BY MR. LONERGAN:</p> <p>7 Q. But you're not an expert in</p> <p>8 terms of what information gets transferred</p> <p>9 back and forth; is that correct? Or what</p> <p>10 protocol is used for that?</p> <p>11 MR. SOBOL: Objection. Scope.</p> <p>12 THE WITNESS: Well, I think it</p> <p>13 depends on what you ask specifically</p> <p>14 whether I'm likely to know it or not.</p> <p>15 QUESTIONS BY MR. LONERGAN:</p> <p>16 Q. Okay. So in a hypothetical,</p> <p>17 let's say your lawyer goes to the pharmacy to</p> <p>18 pick up a prescription drug, what information</p> <p>19 does that pharmacy communicate to his insurer</p> <p>20 and the PBM, and on what protocol is it used</p> <p>21 to do that?</p> <p>22 MR. SOBOL: Objection.</p> <p>23 Compound. Scope.</p> <p>24 THE WITNESS: I will probably</p> <p>25 just get this partially right, which</p>	<p>1 A. All right.</p> <p>2 Q. At paragraph 23 of your public</p> <p>3 nuisance report, you refer to scientifically</p> <p>4 acceptable clinical criteria with respect to</p> <p>5 prescription opioids.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. What are the scientifically</p> <p>9 acceptable clinical criteria you're referring</p> <p>10 to in that paragraph?</p> <p>11 A. This is a little more general.</p> <p>12 It says "like prescription opioids," but the</p> <p>13 scientifically acceptable clinical criteria</p> <p>14 would be -- you know, medical justification</p> <p>15 would be another way to -- medically justify</p> <p>16 would be another way to say it.</p> <p>17 Q. Fair.</p> <p>18 But my question is a little</p> <p>19 more specific.</p> <p>20 Is there a specific criteria</p> <p>21 you believe is the scientifically acceptable</p> <p>22 criteria for the use of prescription opioids?</p> <p>23 A. Well, this is what doctors know</p> <p>24 about --</p> <p>25 Q. Uh-huh.</p>

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<p>1 A. -- what are the medically</p> <p>2 appropriate treatments based on science, and</p> <p>3 the science comes from research studies.</p> <p>4 Q. What have you done to</p> <p>5 understand the scientifically acceptable</p> <p>6 clinical criteria for the use of prescription</p> <p>7 opioids?</p> <p>8 A. I've -- for this I rely on the</p> <p>9 medical expert reports that I mentioned</p> <p>10 earlier: Schumacher, Parran, Egilman.</p> <p>11 Q. Anything else?</p> <p>12 A. I've read things, researched</p> <p>13 literature.</p> <p>14 Q. Is all of the research</p> <p>15 literature that you've read in connection</p> <p>16 with this cited or noted in your expert --</p> <p>17 one of your -- either of your expert reports?</p> <p>18 A. The ones I relied on, yes.</p> <p>19 Q. Okay. Anything else?</p> <p>20 MR. SOBOL: Objection.</p> <p>21 THE WITNESS: Not that I can</p> <p>22 think of.</p> <p>23 QUESTIONS BY MR. LONERGAN:</p> <p>24 Q. You also in your public</p> <p>25 nuisance report conduct a cost/benefit</p>	<p>1 QUESTIONS BY MR. LONERGAN:</p> <p>2 Q. Do you agree that chronic pain</p> <p>3 affects residents of Summit County, Ohio?</p> <p>4 MR. SOBOL: Objection. Scope.</p> <p>5 THE WITNESS: Well, I didn't</p> <p>6 study that, but I'm sure that's true.</p> <p>7 QUESTIONS BY MR. LONERGAN:</p> <p>8 Q. Do you agree that chronic pain</p> <p>9 affects residents of Cuyahoga County, Ohio?</p> <p>10 MR. SOBOL: Objection. Scope.</p> <p>11 THE WITNESS: That's, again,</p> <p>12 something I didn't study, but I'd be</p> <p>13 surprised if it weren't true.</p> <p>14 QUESTIONS BY MR. LONERGAN:</p> <p>15 Q. Do you agree that there are</p> <p>16 risks associated with untreated chronic pain?</p> <p>17 MR. SOBOL: Objection. Scope.</p> <p>18 THE WITNESS: I really don't</p> <p>19 know.</p> <p>20 QUESTIONS BY MR. LONERGAN:</p> <p>21 Q. So you don't know?</p> <p>22 A. I don't know.</p> <p>23 Q. It's not something you took</p> <p>24 into account doing your cost/benefit</p> <p>25 analysis?</p>
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<p>1 analysis concerning the quality of life</p> <p>2 attributes of prescription opioids.</p> <p>3 Correct?</p> <p>4 A. Well, I wouldn't quite call it</p> <p>5 that, but I do do an analysis of quality of</p> <p>6 life.</p> <p>7 Q. What would you call it?</p> <p>8 A. I would call it an economic</p> <p>9 assessment of the pluses and minuses of the</p> <p>10 effect of opioid shipments on quality of</p> <p>11 life.</p> <p>12 Q. And in doing that, you had to</p> <p>13 identify the instances where you believed</p> <p>14 that the use of prescription opioids was</p> <p>15 scientifically acceptable, correct?</p> <p>16 A. That's right.</p> <p>17 Q. Do you agree that chronic pain</p> <p>18 is a serious mental, medical condition?</p> <p>19 A. I'm sure it is.</p> <p>20 Q. Do you agree that chronic pain</p> <p>21 affects millions of people in the United</p> <p>22 States?</p> <p>23 MR. SOBOL: Objection. Scope.</p> <p>24 THE WITNESS: I see that in</p> <p>25 things I read.</p>	<p>1 A. I didn't think I needed to.</p> <p>2 Q. Do you agree that every --</p> <p>3 A. Excuse me. By the way, I</p> <p>4 wouldn't call it a cost/benefit analysis. I</p> <p>5 know what you're referring to.</p> <p>6 Q. What's the term? I'll use your</p> <p>7 term. I just don't remember what you said.</p> <p>8 A. It's an economic assessment of</p> <p>9 the effect of shipments on quality of life.</p> <p>10 You can call it --</p> <p>11 Q. Can we agree to call it a</p> <p>12 cost/benefit analysis --</p> <p>13 MR. SOBOL: Objection.</p> <p>14 QUESTIONS BY MR. LONERGAN:</p> <p>15 Q. -- for short?</p> <p>16 MR. SOBOL: Objection.</p> <p>17 THE WITNESS: It kind of</p> <p>18 bothers me to use the wrong words in</p> <p>19 that, but you can shorten it to "your</p> <p>20 analysis of quality of life."</p> <p>21 MR. SOBOL: Is that -- "your</p> <p>22 analysis," is that one word or two?</p> <p>23 THE WITNESS: It's your</p> <p>24 analysis.</p> <p>25 MR. SOBOL: It's your analysis.</p>

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<p>1 QUESTIONS BY MR. LONERGAN:</p> <p>2 Q. Do you agree --</p> <p>3 MR. LONERGAN: I'm running</p> <p>4 against the clock here. I would love</p> <p>5 to engage with you guys.</p> <p>6 QUESTIONS BY MR. LONERGAN:</p> <p>7 Q. Do you agree that no single</p> <p>8 treatment option will be appropriate for</p> <p>9 every chronic pain patient?</p> <p>10 A. I really don't know. It's</p> <p>11 not --</p> <p>12 Q. It's not something you --</p> <p>13 A. -- not my --</p> <p>14 Q. -- considered in your economic</p> <p>15 analysis --</p> <p>16 A. It's not my --</p> <p>17 Q. -- correct?</p> <p>18 A. Yeah, it's not my expertise.</p> <p>19 Q. Do you agree that it is</p> <p>20 important for physicians to have a variety of</p> <p>21 treatment options to choose from when</p> <p>22 treating a medical condition?</p> <p>23 MR. SOBOL: Objection. Scope.</p> <p>24 THE WITNESS: I really --</p> <p>25 generally, options are good. I really</p>	<p>1 patient in making the right decision</p> <p>2 for them.</p> <p>3 QUESTIONS BY MR. LONERGAN:</p> <p>4 Q. And you believe --</p> <p>5 A. Considering --</p> <p>6 Q. You believe that didn't happen</p> <p>7 here, correct?</p> <p>8 A. Considering the pluses and</p> <p>9 minuses.</p> <p>10 Could you be more specific</p> <p>11 about what you're asking?</p> <p>12 Q. Well, strike that.</p> <p>13 In paragraph 22 of your public</p> <p>14 nuisance report, you opined that physicians</p> <p>15 were misled by defendants' marketing,</p> <p>16 correct?</p> <p>17 A. That's what I say in the last</p> <p>18 sentence.</p> <p>19 Q. And that's your opinion?</p> <p>20 A. Well, it's my opinion. It's,</p> <p>21 again, based on the reports of the medical</p> <p>22 experts.</p> <p>23 Q. You're not an expert on the FDA</p> <p>24 regulations concerning prescription</p> <p>25 pharmaceutical marketing, are you?</p>
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<p>1 don't have a specific opinion about</p> <p>2 particular medical options.</p> <p>3 QUESTIONS BY MR. LONERGAN:</p> <p>4 Q. Do you agree that all</p> <p>5 treatments for chronic pain have risks?</p> <p>6 MR. SOBOL: Objection. Scope.</p> <p>7 THE WITNESS: I don't know.</p> <p>8 QUESTIONS BY MR. LONERGAN:</p> <p>9 Q. It's not something you</p> <p>10 considered as a part of conducting your</p> <p>11 economic analysis, correct?</p> <p>12 MR. SOBOL: Objection. Scope.</p> <p>13 THE WITNESS: Yeah, I didn't</p> <p>14 study that.</p> <p>15 QUESTIONS BY MR. LONERGAN:</p> <p>16 Q. Do you agree that it's the role</p> <p>17 of the prescribing physician to weigh the</p> <p>18 risks and benefits of any pain medication</p> <p>19 when treating an individual patient?</p> <p>20 MR. SOBOL: Objection. Scope.</p> <p>21 THE WITNESS: Well, ideally an</p> <p>22 agent, which is what the economic</p> <p>23 literature refers to physicians as --</p> <p>24 an agent is somebody acting on behalf</p> <p>25 of the patient -- should help the</p>	<p>1 A. I know something about them.</p> <p>2 It depends on what you ask.</p> <p>3 Q. Do you hold yourself out to be</p> <p>4 an expert on the FDA regulations concerning</p> <p>5 prescription pharmaceutical marketing?</p> <p>6 A. Well, it again depends. In my</p> <p>7 work, I need to know some things. So it's</p> <p>8 not zero. It's not 100 percent. It really</p> <p>9 depends on the particular area you're asking</p> <p>10 about.</p> <p>11 Q. Well, the particular area I'm</p> <p>12 asking about are the FDA regulations</p> <p>13 concerning prescription pharmaceutical</p> <p>14 marketing.</p> <p>15 A. Yes.</p> <p>16 Q. Do you consider yourself to be</p> <p>17 a 100 percent expert on those regulations?</p> <p>18 MR. SOBOL: Objection. Asked</p> <p>19 and answered.</p> <p>20 THE WITNESS: No, I don't</p> <p>21 consider myself to be a 100 percent,</p> <p>22 but I'm also not a zero percent.</p> <p>23 QUESTIONS BY MR. LONERGAN:</p> <p>24 Q. Do you have an opinion in this</p> <p>25 litigation as to whether defendants'</p>

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<p style="text-align: right;">Page 781</p> <p>1 prescription opioid marketing violated the</p> <p>2 FDA regulations concerning prescription</p> <p>3 pharmaceutical marketing?</p> <p>4 MR. SOBOL: Objection. Scope.</p> <p>5 THE WITNESS: That's not</p> <p>6 something that I studied.</p> <p>7 QUESTIONS BY MR. LONERGAN:</p> <p>8 Q. Are you able to point to any</p> <p>9 physician who was actually misled by the</p> <p>10 opioid manufacturers' marketing?</p> <p>11 MR. SOBOL: Objection. Scope.</p> <p>12 THE WITNESS: That's not</p> <p>13 something I studied.</p> <p>14 QUESTIONS BY MR. LONERGAN:</p> <p>15 Q. Do you agree that physicians</p> <p>16 are learned intermediaries?</p> <p>17 MR. SOBOL: Objection. Scope.</p> <p>18 THE WITNESS: Well, I agree</p> <p>19 that physicians have medical knowledge</p> <p>20 that patients generally do not know,</p> <p>21 and I agree that they're</p> <p>22 intermediaries in a number of ways</p> <p>23 between patients and the patients'</p> <p>24 needs and the health care services and</p> <p>25 products that patients require.</p>	<p style="text-align: right;">Page 783</p> <p>1 QUESTIONS BY MR. LONERGAN:</p> <p>2 Q. Sir, is it your understanding</p> <p>3 that each prescription opioid at issue in</p> <p>4 this litigation carries with it an</p> <p>5 FDA-approved label or package insert?</p> <p>6 MR. SOBOL: Objection. Scope.</p> <p>7 THE WITNESS: Yeah, I do</p> <p>8 understand that.</p> <p>9 QUESTIONS BY MR. LONERGAN:</p> <p>10 Q. And you understand that the</p> <p>11 pharmaceutical manufacturers' employees who</p> <p>12 detailed doctors provided those labels to</p> <p>13 physicians during those detail visits?</p> <p>14 MR. SOBOL: Objection. Scope.</p> <p>15 THE WITNESS: Well, I don't</p> <p>16 know what the transaction was between</p> <p>17 the detail people and the doctors.</p> <p>18 QUESTIONS BY MR. LONERGAN:</p> <p>19 Q. Do you have an opinion as to</p> <p>20 whether the FDA-approved labels for the</p> <p>21 prescription opioids at issue in this</p> <p>22 litigation were misleading?</p> <p>23 MR. SOBOL: Objection. Scope.</p> <p>24 THE WITNESS: I don't have an</p> <p>25 opinion about that. I didn't study</p>
<p style="text-align: right;">Page 782</p> <p>1 QUESTIONS BY MR. LONERGAN:</p> <p>2 Q. What do you understand the term</p> <p>3 "learned intermediary" to mean?</p> <p>4 A. Well, I explained my -- I don't</p> <p>5 have a specialized legal understanding. I</p> <p>6 only explain what the two words mean to me in</p> <p>7 this context. I don't know if that was</p> <p>8 clear.</p> <p>9 But learned is specialized</p> <p>10 medical knowledge that patients don't have,</p> <p>11 and intermediary means they assist the</p> <p>12 patients in provide -- in getting access to</p> <p>13 services that the patients needs.</p> <p>14 Q. Fine.</p> <p>15 Using your definition of</p> <p>16 learned intermediary, do you consider doctors</p> <p>17 who prescribe prescription opioids to</p> <p>18 patients to be learned intermediaries?</p> <p>19 MR. SOBOL: Objection. Scope.</p> <p>20 Form.</p> <p>21 THE WITNESS: Well, I think in</p> <p>22 general doctors are learned</p> <p>23 intermediaries, and so that covers</p> <p>24 doctors and, you know, the tasks that</p> <p>25 they have.</p>	<p style="text-align: right;">Page 784</p> <p>1 it.</p> <p>2 QUESTIONS BY MR. LONERGAN:</p> <p>3 Q. In your opinion, is it possible</p> <p>4 for an opioid manufacturer to appropriately</p> <p>5 market a prescription opioid?</p> <p>6 MR. SOBOL: Objection. Scope.</p> <p>7 THE WITNESS: Well, it might</p> <p>8 be. I didn't study it.</p> <p>9 QUESTIONS BY MR. LONERGAN:</p> <p>10 Q. Well, you did -- I mean, you</p> <p>11 did opine that the opioid manufacturers</p> <p>12 misled physicians, correct?</p> <p>13 MR. SOBOL: Objection. Scope.</p> <p>14 THE WITNESS: Yeah, based on</p> <p>15 other reports, yes.</p> <p>16 QUESTIONS BY MR. LONERGAN:</p> <p>17 Q. Right.</p> <p>18 But based on your understanding</p> <p>19 that the manufacturing was misleading, right?</p> <p>20 MR. SOBOL: Objection. Scope.</p> <p>21 THE WITNESS: Yes.</p> <p>22 QUESTIONS BY MR. LONERGAN:</p> <p>23 Q. And so here we are. Now I'm</p> <p>24 asking: Is it possible for a prescription</p> <p>25 opioid manufacturer to, in your mind,</p>

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<p>1 appropriately market a prescription opioid?</p> <p>2 MR. SOBOL: Objection. Scope.</p> <p>3 Form.</p> <p>4 THE WITNESS: It might be on --</p> <p>5 I really didn't study it. I don't</p> <p>6 know.</p> <p>7 QUESTIONS BY MR. LONERGAN:</p> <p>8 Q. Is it possible for an opioid</p> <p>9 manufacturer to market a prescription opioid</p> <p>10 in a way that expands the market for</p> <p>11 prescription opioid and still be appropriate?</p> <p>12 MR. SOBOL: Objection. Scope.</p> <p>13 Form.</p> <p>14 THE WITNESS: I don't know.</p> <p>15 QUESTIONS BY MR. LONERGAN:</p> <p>16 Q. As a health care economist, are</p> <p>17 you familiar with the economic literature</p> <p>18 concerning the factors that influence</p> <p>19 physician prescribing?</p> <p>20 A. Yes.</p> <p>21 Q. And is one of those factors</p> <p>22 manufacturer marketing?</p> <p>23 A. Yes.</p> <p>24 Q. Is one of those factors the</p> <p>25 overall cost to the patient?</p>	<p>1 THE WITNESS: You gave a pretty</p> <p>2 long list there.</p> <p>3 Well, at least there's also</p> <p>4 financial incentives to physicians --</p> <p>5 QUESTIONS BY MR. LONERGAN:</p> <p>6 Q. Anything else?</p> <p>7 A. -- that would also affect it.</p> <p>8 I think within the buckets you</p> <p>9 gave, it would capture most of what I can</p> <p>10 think of.</p> <p>11 Q. Given all of the different</p> <p>12 factors we've just walked through that are</p> <p>13 known in the economic literature to affect a</p> <p>14 physician's prescribing, would you agree that</p> <p>15 marketing would affect a prescribing</p> <p>16 physician differently from other prescribing</p> <p>17 physicians?</p> <p>18 MR. SOBOL: Objection.</p> <p>19 QUESTIONS BY MR. LONERGAN:</p> <p>20 Q. I can ask that question in a</p> <p>21 better way.</p> <p>22 A. Thank you.</p> <p>23 Q. Is it fair to say that</p> <p>24 detailing would be expected to affect</p> <p>25 different physicians differently?</p>
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<p>1 A. Probably sometimes. Not always</p> <p>2 as much as it should be.</p> <p>3 Q. Is one of those factors the</p> <p>4 applicable formulary?</p> <p>5 A. Sometimes, probably.</p> <p>6 Q. Is one of those factors</p> <p>7 applicable utilization management protocols?</p> <p>8 A. Well, generally.</p> <p>9 Q. Is one of those factors known</p> <p>10 to be a physician's experience with a</p> <p>11 particular medication?</p> <p>12 A. That's also one of the factors.</p> <p>13 Q. Is one of those factors known</p> <p>14 to be a physician's experience with a</p> <p>15 particular disease state?</p> <p>16 A. That's also a factor.</p> <p>17 Q. Is one of those factors known</p> <p>18 to be a physician's overall years of</p> <p>19 experience?</p> <p>20 A. Generally a physician's</p> <p>21 experience affects how they treat patients.</p> <p>22 Q. Are there any other factors</p> <p>23 that you're aware of that are known to affect</p> <p>24 a physician's prescribing?</p> <p>25 MR. SOBOL: Objection. Scope.</p>	<p>1 MR. SOBOL: Objection. Scope.</p> <p>2 THE WITNESS: It might. I'm</p> <p>3 not sure.</p> <p>4 QUESTIONS BY MR. LONERGAN:</p> <p>5 Q. It's not something you have an</p> <p>6 opinion on?</p> <p>7 A. I haven't studied it, no.</p> <p>8 MR. LONERGAN: Why don't we</p> <p>9 take a break.</p> <p>10 VIDEOGRAPHER: The time is</p> <p>11 4:19 p.m., and we're off the record.</p> <p>12 (Off the record at 4:19 p.m.)</p> <p>13 VIDEOGRAPHER: The time is</p> <p>14 4:32 p.m., and we're on the record.</p> <p>15 CROSS-EXAMINATION</p> <p>16 QUESTIONS BY MR. CARTER:</p> <p>17 Q. My name is Ed Carter. I</p> <p>18 represent Walmart, and I have some questions</p> <p>19 for you.</p> <p>20 All right?</p> <p>21 A. That's fine. Yeah, sure.</p> <p>22 Q. Who are the retail pharmacy</p> <p>23 defendants in this case?</p> <p>24 A. I can name some.</p> <p>25 Q. Which ones can you name?</p>

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<p>1 A. I can name CVS. I can name</p> <p>2 Rite Aid. I guess Walmart would be a retail.</p> <p>3 Q. Any others?</p> <p>4 A. Those are the only ones I can</p> <p>5 name.</p> <p>6 Q. What consideration, if any, did</p> <p>7 you pay to the retail pharmacy defendants in</p> <p>8 preparation of your damages report?</p> <p>9 A. I made sure to mention the</p> <p>10 defendants included signatories to the CSA.</p> <p>11 Q. Anything else in your damages</p> <p>12 report that takes the retail pharmacy</p> <p>13 defendants into specific consideration?</p> <p>14 A. No, there's nothing else in the</p> <p>15 damages report that gives special attention</p> <p>16 to the retail pharmacies.</p> <p>17 Q. So nothing beyond their status</p> <p>18 as CSA signatories?</p> <p>19 A. That's correct, no other</p> <p>20 special attention.</p> <p>21 Q. Same question for the nuisance</p> <p>22 report: What specific attention did you pay</p> <p>23 to the retail pharmacy defendants in the</p> <p>24 course of preparing your nuisance report?</p> <p>25 A. There was no special attention</p>	<p>1 Q. Do you know whether Walmart</p> <p>2 ever distributed to a non-Walmart pharmacy?</p> <p>3 A. No, I don't know that.</p> <p>4 Q. Do you know whether any CVS</p> <p>5 distribution ever went to a non-CVS Pharmacy?</p> <p>6 A. I'm not familiar with where</p> <p>7 else the CVS shipments might have gone.</p> <p>8 Q. Same question for Rite Aid?</p> <p>9 A. Same answer: I'm not sure</p> <p>10 where the Rite Aid shipments would have gone,</p> <p>11 aside from Rite Aid pharmacies.</p> <p>12 Q. Do you know whether any of the</p> <p>13 retail pharmacy defendants currently</p> <p>14 distribute opioids?</p> <p>15 MR. SOBOL: Objection. Scope.</p> <p>16 THE WITNESS: I haven't studied</p> <p>17 that.</p> <p>18 QUESTIONS BY MR. CARTER:</p> <p>19 Q. Will you identify for me all</p> <p>20 allegedly wrongful conduct on the part of the</p> <p>21 retail pharmacy defendants that factors into</p> <p>22 your damages report?</p> <p>23 MR. SOBOL: Objection. Scope.</p> <p>24 THE WITNESS: I didn't study</p> <p>25 that.</p>
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<p>1 to the retail pharmacy defendants in the</p> <p>2 public nuisance report.</p> <p>3 Q. What role in terms of conduct</p> <p>4 do the retail pharmacy defendants play in the</p> <p>5 context of your damages report?</p> <p>6 A. They distribute shipments of</p> <p>7 opioids.</p> <p>8 Q. Do you know to whom they</p> <p>9 distribute those shipments?</p> <p>10 A. Well, to patients.</p> <p>11 Q. Do you know whether they --</p> <p>12 whether the retail pharmacy defendants ever</p> <p>13 distribute outside of their own corporate</p> <p>14 network?</p> <p>15 MR. SOBOL: Objection.</p> <p>16 THE WITNESS: I'm not sure what</p> <p>17 you mean.</p> <p>18 QUESTIONS BY MR. CARTER:</p> <p>19 Q. So do you know where Walmart --</p> <p>20 for example, when Walmart distributed</p> <p>21 opioids, do you know to whom Walmart</p> <p>22 distributed opioids?</p> <p>23 A. Well, they would have sold some</p> <p>24 from their stores. I don't know of any other</p> <p>25 outlet for their opioids.</p>	<p>1 QUESTIONS BY MR. CARTER:</p> <p>2 Q. Okay. Identify for me all</p> <p>3 wrongful conduct on the part of the pharmacy</p> <p>4 defendants that factors into your nuisance</p> <p>5 report.</p> <p>6 MR. SOBOL: Objection. Scope.</p> <p>7 THE WITNESS: I didn't study</p> <p>8 that.</p> <p>9 QUESTIONS BY MR. CARTER:</p> <p>10 Q. In your damages report, is it</p> <p>11 possible that there are some defendants in</p> <p>12 this case that are not responsible for any</p> <p>13 damages -- any of your damages estimates?</p> <p>14 MR. SOBOL: Objection. Scope.</p> <p>15 Form.</p> <p>16 THE WITNESS: I'm not sure how</p> <p>17 to even answer that. I didn't study</p> <p>18 it.</p> <p>19 QUESTIONS BY MR. CARTER:</p> <p>20 Q. So in the course of preparing</p> <p>21 your damage reports, is it accurate to say</p> <p>22 that you did not make any calculation or</p> <p>23 apportionment of the damages in your estimate</p> <p>24 to any particular defendant? Is that a true</p> <p>25 statement?</p>

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<p>1 A. That's generally a true 2 statement. 3 As I'm sure you know, the work 4 in my report was to identify the potentially 5 affected costs, and then I had input, 6 primarily from Professor Cutler, about the 7 share of those costs that could be attributed 8 to misconduct. 9 Now, the nature of the overall 10 enterprise is that the attribution to 11 particular defendants becomes possible at the 12 Rosenthal stage, depending on some things, 13 but it's not an input that would come into 14 play in my stage. 15 Q. So putting to one side inputs 16 from Cutler or from Rosenthal, you, 17 personally, you have not conducted an 18 independent assessment of damage estimates 19 apportioned to a particular defendant? 20 A. That's correct, my damage 21 estimates apply to shipments due to 22 misconduct where I got the inputs from other 23 experts. 24 Q. Same question for your nuisance 25 report. Do the estimates in your nuisance</p>	<p>1 the case tomorrow, would any of the numbers 2 in your damages report change? 3 MR. SOBOL: Objection. Scope. 4 Form. 5 THE WITNESS: I'm not sure. It 6 depends. I would have to -- I'd have 7 to know more. I'd have to probably 8 get some guidance from legal. 9 QUESTIONS BY MR. CARTER: 10 Q. Okay. So, for example, if all 11 of the retail defendants were dismissed from 12 the case tomorrow, would you amend or need to 13 change your damages calculations in your 14 report? 15 MR. SOBOL: Objection. Scope. 16 Form. 17 THE WITNESS: I'm not sure. I 18 didn't study that. 19 QUESTIONS BY MR. CARTER: 20 Q. Okay. If five defendants left 21 the case tomorrow, would you need to make any 22 changes to your public nuisance report? 23 MR. SOBOL: Objection. Scope. 24 Form. 25 THE WITNESS: I would have</p>
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<p>1 report turn in any way on a specific 2 defendant? 3 MR. SOBOL: Objection. Form. 4 THE WITNESS: Can you -- 5 QUESTIONS BY MR. CARTER: 6 Q. Sure. 7 A. -- explain what you mean by 8 "turn in any way"? I'm not sure what you're 9 asking. 10 Q. In looking at your public 11 nuisance report, can anyone pull from that a 12 specific apportionment of damages that you 13 would attribute to an individual defendant? 14 A. Well, this is a similar answer 15 to the damages report: that my estimates are 16 aggregate, and against which shares are 17 applied from the Cutler report. 18 So if those shares change 19 because of some other counterfactual, then 20 they would flow through into my public 21 nuisance. 22 Q. Okay. Do you know how many 23 defendant parties are in the case currently? 24 A. I'm not sure. 25 Q. Okay. If five defendants left</p>	<p>1 to -- I'm not sure. I didn't study 2 that, and I probably need guidance 3 from legal. 4 QUESTIONS BY MR. CARTER: 5 Q. In describing marketing 6 conduct, do you agree that a defendant who 7 never marketed or advertised opioids is not 8 responsible for any alleged harms caused by 9 such marketing? 10 MR. SOBOL: Objection. Scope. 11 THE WITNESS: I'm not really 12 sure about that. 13 QUESTIONS BY MR. CARTER: 14 Q. Okay. 15 A. I'm sorry. 16 Q. So you think it's possible that 17 someone who didn't engage in marketing or 18 advertising could still be responsible from 19 an economic perspective for any such harms 20 caused by that marketing? 21 MR. SOBOL: Objection. Form. 22 Scope. 23 THE WITNESS: I -- I'm not -- 24 I'm not sure. 25</p>

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<p>1 QUESTIONS BY MR. CARTER:</p> <p>2 Q. Okay. Do you have an expert</p> <p>3 opinion one way or another on that?</p> <p>4 MR. SOBOL: Objection. Scope.</p> <p>5 Form.</p> <p>6 THE WITNESS: I'm not sure.</p> <p>7 QUESTIONS BY MR. CARTER:</p> <p>8 Q. Okay. So you don't --</p> <p>9 A. I don't have an opinion one way</p> <p>10 or the other whether that's true or false.</p> <p>11 Q. Okay. You were asked some</p> <p>12 questions about pages 90 and 92 of your</p> <p>13 nuisance report. If you turn to that section</p> <p>14 with me, please, I just want to orient you.</p> <p>15 You see the paragraphs 90 and</p> <p>16 92?</p> <p>17 A. Yeah. Okay. Good.</p> <p>18 Q. The one question that didn't</p> <p>19 get a form objection.</p> <p>20 MR. SOBOL: Well, I was still</p> <p>21 confused.</p> <p>22 MR. CARTER: Fair.</p> <p>23 QUESTIONS BY MR. CARTER:</p> <p>24 Q. So you recall discussing with</p> <p>25 counsel the defendant -- the Subheading D,</p>	<p>1 contained in the report. There was nothing</p> <p>2 specific to the retail defendants.</p> <p>3 Q. You were asked a question about</p> <p>4 whether you knew when the counties first were</p> <p>5 aware of -- or should have been aware of the</p> <p>6 various harms referenced in this section of</p> <p>7 the report. I want to follow up on that</p> <p>8 series of questions.</p> <p>9 A. Okay.</p> <p>10 Q. You indicated that you didn't</p> <p>11 know when they were first aware. I want to</p> <p>12 ask a different question.</p> <p>13 Is there a time period by which</p> <p>14 you can opine to a reasonable degree of</p> <p>15 economic certainty that more likely than not</p> <p>16 by day X Summit County was aware that it was</p> <p>17 being harmed as a result of misleading</p> <p>18 marketing?</p> <p>19 MR. SOBOL: Objection. Scope.</p> <p>20 THE WITNESS: I don't think I</p> <p>21 could do that. I wasn't asked to</p> <p>22 study it.</p> <p>23 QUESTIONS BY MR. CARTER:</p> <p>24 Q. Okay. Same question for</p> <p>25 Cuyahoga County.</p>
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<p>1 defendants were or should have been aware of</p> <p>2 the interference?</p> <p>3 A. I do recall that, yes.</p> <p>4 Q. Okay. Do you know whether any</p> <p>5 of the retail pharmacy defendants are --</p> <p>6 well, strike that.</p> <p>7 Do you intend to include any of</p> <p>8 the retail pharmacy defendants in the</p> <p>9 statements that you offer in this section of</p> <p>10 your report?</p> <p>11 MR. SOBOL: Section D?</p> <p>12 MR. CARTER: Yes.</p> <p>13 THE WITNESS: Yeah,</p> <p>14 potentially.</p> <p>15 QUESTIONS BY MR. CARTER:</p> <p>16 Q. Okay. Do you provide any</p> <p>17 examples that specifically identify retail</p> <p>18 pharmacy defendants in this section?</p> <p>19 A. No, I don't think so.</p> <p>20 Q. Did you conduct any separate</p> <p>21 analysis of the alleged conduct of the retail</p> <p>22 pharmacy defendants in connection with</p> <p>23 forming the opinions in Subsection D of this</p> <p>24 report?</p> <p>25 A. The analysis I conducted are</p>	<p>1 MR. SOBOL: Same objection.</p> <p>2 Scope.</p> <p>3 THE WITNESS: Same answer: I</p> <p>4 wasn't asked to study it. I don't</p> <p>5 think I could do that.</p> <p>6 QUESTIONS BY MR. CARTER:</p> <p>7 Q. Is there a date by which you're</p> <p>8 willing to opine more likely than not Summit</p> <p>9 County was aware that it was incurring harms</p> <p>10 to the public health and welfare as a result</p> <p>11 of opioid-related expenses?</p> <p>12 MR. SOBOL: Objection. Scope.</p> <p>13 THE WITNESS: I wasn't asked to</p> <p>14 study that. I don't think I could</p> <p>15 answer that question.</p> <p>16 QUESTIONS BY MR. CARTER:</p> <p>17 Q. Same question for Cuyahoga</p> <p>18 County.</p> <p>19 A. Same answer: I wasn't asked to</p> <p>20 study it. I don't think I could answer that</p> <p>21 question.</p> <p>22 Q. Is it your opinion that when</p> <p>23 Summit County was expending its budget for</p> <p>24 2006, did the county have any idea that it</p> <p>25 was making expenditures that were related to</p>

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<p>1 opioids?</p> <p>2 A. I would be speculating, and</p> <p>3 what is the county here?</p> <p>4 Q. Summit.</p> <p>5 A. I know. I meant when you say</p> <p>6 "Summit County," that kind of knowledge is</p> <p>7 something that people have, so I would expect</p> <p>8 it would depend.</p> <p>9 Q. So do you know -- do you have</p> <p>10 an expert opinion one way or the other as to</p> <p>11 whether in 2006, when expending its budget in</p> <p>12 the various divisions that you studied,</p> <p>13 whether Summit County was aware that it was</p> <p>14 spending even a dollar on opioid-related</p> <p>15 costs?</p> <p>16 MR. SOBOL: Objection. Scope.</p> <p>17 Form.</p> <p>18 THE WITNESS: Well, I didn't</p> <p>19 study that.</p> <p>20 QUESTIONS BY MR. CARTER:</p> <p>21 Q. Would that --</p> <p>22 A. Just -- excuse me, one more</p> <p>23 comment.</p> <p>24 Q. Sure.</p> <p>25 A. It's -- I find it a little odd</p>	<p>1 A. Same answer: I don't remember</p> <p>2 anything.</p> <p>3 Q. Same answer the rest of the</p> <p>4 years through 2018?</p> <p>5 MR. SOBOL: Objection. Scope.</p> <p>6 THE WITNESS: Do you mind</p> <p>7 repeating the question for the block</p> <p>8 of years there?</p> <p>9 QUESTIONS BY MR. CARTER:</p> <p>10 Q. Sure. Yes.</p> <p>11 The last one I did was 2009.</p> <p>12 So from 2010 to 2018, did you see anything in</p> <p>13 your review of the case materials reflecting</p> <p>14 an understanding on the part of individuals</p> <p>15 in Summit County that they were making</p> <p>16 opioid-related budget expenditures?</p> <p>17 A. I'm pretty sure I did.</p> <p>18 Q. Okay. And what is the first</p> <p>19 year that you recall seeing something in the</p> <p>20 case materials reflecting that understanding</p> <p>21 from an individual in Summit County?</p> <p>22 A. I don't remember.</p> <p>23 Q. Okay. What about Cuyahoga</p> <p>24 County?</p> <p>25 And I'm asking this question at</p>
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<p>1 to ask about the county as being aware of</p> <p>2 something.</p> <p>3 I assume what you mean by that</p> <p>4 is something about the people who work in the</p> <p>5 county. And since there are many, that would</p> <p>6 have probably been a different answer for</p> <p>7 different groups of people.</p> <p>8 Q. In your review of the case</p> <p>9 materials, did you come across individuals in</p> <p>10 Summit County who were aware of making</p> <p>11 opioid-related expenditures in 2006?</p> <p>12 A. I don't remember talking to</p> <p>13 anyone about 2006.</p> <p>14 Q. What about 2007? And this is</p> <p>15 focused on your review of the case materials,</p> <p>16 whether you're aware of individuals in Summit</p> <p>17 County reflecting awareness that they were</p> <p>18 making opioid-related expenditures in 2007.</p> <p>19 A. I don't remember anything,</p> <p>20 sitting here.</p> <p>21 Q. Okay. Do you remember anything</p> <p>22 for 2008?</p> <p>23 A. Same answer: I don't remember</p> <p>24 anything sitting here.</p> <p>25 Q. 2009?</p>	<p>1 the county level. Do you know whether the</p> <p>2 county, in making its budget expenditures for</p> <p>3 2006, if the county was aware that it was</p> <p>4 spending even a single dollar on</p> <p>5 opioid-related expenses?</p> <p>6 MR. SOBOL: Objection. Scope.</p> <p>7 THE WITNESS: I didn't study</p> <p>8 that. I'm not sure.</p> <p>9 QUESTIONS BY MR. CARTER:</p> <p>10 Q. Okay. Did you study the</p> <p>11 county's awareness for any period from 2007</p> <p>12 to 2018 on that same issue?</p> <p>13 A. Well, I would have encountered</p> <p>14 evidence for that.</p> <p>15 Q. Okay. And what do you -- what</p> <p>16 did you do when you encountered such</p> <p>17 evidence?</p> <p>18 How did you factor it into your</p> <p>19 economic analysis, if at all?</p> <p>20 MR. SOBOL: Objection. Form.</p> <p>21 THE WITNESS: Well, I found it</p> <p>22 to be confirmatory that these are</p> <p>23 opioid-related expenditures. I don't</p> <p>24 remember when, in each of the</p> <p>25 counties, I heard -- or talked to</p>

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<p>1 someone that they acknowledged, yes, 2 these are opioid-related expenditures. 3 But, I don't know, just in the 4 course of conversation, that became 5 clear. 6 QUESTIONS BY MR. CARTER: 7 Q. To the extent you came across 8 confirmatory evidence, what value, what 9 weight, would you assign that in the course 10 of your economic analysis? 11 MR. SOBOL: Objection. 12 THE WITNESS: I'm not sure how 13 to answer that. 14 QUESTIONS BY MR. CARTER: 15 Q. So do you know what proportion 16 of -- because we were talking about Cuyahoga 17 County. 18 Do you know what proportion of 19 Cuyahoga County's expenditures you found 20 equivalent, confirmatory evidence that the 21 individuals running those divisions were 22 aware of opioid-related expenditures? 23 A. I'm not sure. 24 MR. SOBOL: Objection. 25</p>	<p>1 cost with respect to what else those funds 2 could have been used for. So it was -- I 3 mean, that's what I needed to know. 4 Q. In the course of your example 5 about getting the car fixed and whether 6 somebody has \$75 in car repairs, I want to 7 apply that to what we're discussing here. 8 Would it be possible to have an 9 opportunity cost for car repairs if the 10 individual didn't even understand that they 11 were spending \$75 on car repairs? 12 MR. SOBOL: Objection to the 13 form. 14 QUESTIONS BY MR. CARTER: 15 Q. How does the concept of 16 opportunity cost apply when someone doesn't 17 know what they're spending the money on? 18 A. I think it still applies. 19 Q. How so? 20 A. Why not? 21 Q. So you think that -- well, 22 strike that. 23 Would a reasonable and rational 24 economic actor spend millions of dollars on 25 something without knowing they're spending</p>
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<p>1 QUESTIONS BY MR. CARTER: 2 Q. Do you know whether it was more 3 than 50 percent of the expenditures you 4 studied? 5 A. It could -- it could be or 6 maybe not -- it could be yes or could be no. 7 I'm not sure. 8 Q. Do you know the percent of 9 instances in Summit County where you found 10 confirmatory evidence that the individuals in 11 the county in the various divisions were 12 aware that they were making opioid-related 13 expenditures? 14 MR. SOBOL: Objection. 15 THE WITNESS: I don't remember 16 one way or the other. 17 QUESTIONS BY MR. CARTER: 18 Q. Okay. Does the absence of any 19 such confirmatory evidence give you any pause 20 in the course of your economic analysis? 21 A. Not really. The work that I 22 did in identifying opioid-related 23 expenditures is a reliable way to get an 24 opportunity cost, as we discussed quite a bit 25 this morning. And that is the opportunity</p>	<p>1 that money on something? 2 A. They probably would not, but 3 that's different than whether -- what the 4 opportunity costs of that fund -- or those 5 funds are. 6 Q. So to the extent -- well, 7 strike that. 8 Did you see evidence in the 9 record you reviewed where individuals in 10 various divisions of the county disavowed any 11 opioid-related expenditures prior to, say, 12 2012? 13 Did you see that testimony? 14 MR. SOBOL: Objection. 15 THE WITNESS: I don't recall 16 it. 17 QUESTIONS BY MR. CARTER: 18 Q. Okay. Do you recall when -- 19 well, do you know who Thomas Gilson is? 20 A. No, sorry. 21 Q. Do you know who Hugh Shannon 22 is? 23 A. No, I don't. 24 Q. Do you know the names of any of 25 the individuals in the Cuyahoga County's</p>

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<p>1 Medical Examiner's Office, other than the two</p> <p>2 I just gave you?</p> <p>3 A. Not as I sit here today.</p> <p>4 Q. Okay. Do you know when</p> <p>5 Cuyahoga County Medical Examiner's Office</p> <p>6 first identified an opioid-related problem?</p> <p>7 A. An opioid-related problem?</p> <p>8 Problem in what sense here</p> <p>9 today? A death due to opioids, or what are</p> <p>10 you asking?</p> <p>11 Q. What they defined as a crisis.</p> <p>12 Do you know when --</p> <p>13 A. They defined as a crisis.</p> <p>14 Q. -- they first identified a</p> <p>15 crisis?</p> <p>16 A. I'm not sure --</p> <p>17 MR. SOBOL: Well, wait, wait.</p> <p>18 Objection. Scope.</p> <p>19 THE WITNESS: I didn't study</p> <p>20 that.</p> <p>21 QUESTIONS BY MR. CARTER:</p> <p>22 Q. Okay. Do you believe it's</p> <p>23 possible that the Summit County -- or excuse</p> <p>24 me, strike that.</p> <p>25 Do you believe it's possible</p>	<p>1 report, opioid-related expenditures you're</p> <p>2 asking about?</p> <p>3 Q. Yes.</p> <p>4 Is it an objective or</p> <p>5 subjective measure?</p> <p>6 A. It's an objective measure.</p> <p>7 Q. Okay. Are opioid-related</p> <p>8 expenditures ever self-evident to the people</p> <p>9 making them?</p> <p>10 A. Sometimes, yes.</p> <p>11 Q. Are you a political economist?</p> <p>12 A. I border on that, yeah. Some</p> <p>13 cases.</p> <p>14 Q. Do you hold yourself out as an</p> <p>15 expert political economist?</p> <p>16 A. Well, it's something I've done</p> <p>17 research on, so, again, depending on what the</p> <p>18 question is, I have some expertise in that,</p> <p>19 yes.</p> <p>20 Q. In your prior litigation</p> <p>21 experience, have you ever been offered as an</p> <p>22 expert political economist?</p> <p>23 A. Political economist? I don't</p> <p>24 think I've conducted a litigation-related</p> <p>25 investigation that you would call political</p>
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<p>1 that the Cuyahoga County Medical Examiner's</p> <p>2 Office spent millions of dollars on</p> <p>3 opioid-related expenditures for years before</p> <p>4 they realized they had an opioid-related</p> <p>5 crisis?</p> <p>6 MR. SOBOL: Objection. Scope.</p> <p>7 Form.</p> <p>8 You can answer.</p> <p>9 THE WITNESS: I believe it's</p> <p>10 possible.</p> <p>11 Was that a question?</p> <p>12 Well, I think maybe it's</p> <p>13 possible. I didn't study it.</p> <p>14 QUESTIONS BY MR. CARTER:</p> <p>15 Q. Okay. On page 12 of your</p> <p>16 nuisance report, if you turn there with me.</p> <p>17 Okay. Is your measure of</p> <p>18 opioid-related expenditures an objective or a</p> <p>19 subjective measure?</p> <p>20 A. With respect to the damages</p> <p>21 report or -- I thought we were in the public</p> <p>22 nuisance report.</p> <p>23 Q. We're going back to the damages</p> <p>24 report.</p> <p>25 A. And in general in the damages</p>	<p>1 economy.</p> <p>2 Q. Okay. In the course of your</p> <p>3 report, you rely on data from Professor</p> <p>4 Cutler from the National Center of Health</p> <p>5 Statistics, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. I believe so. Or maybe is it</p> <p>9 Rosenthal?</p> <p>10 Can you -- I'm sorry, can you</p> <p>11 let me know where you're talking about so I</p> <p>12 can take a look?</p> <p>13 Q. Let me ask you this: Are you</p> <p>14 aware that there are some NCHS data that's</p> <p>15 considered restricted data?</p> <p>16 A. Yeah, I'm generally aware of</p> <p>17 this sort of issue, yeah.</p> <p>18 Q. Did you personally sign a data</p> <p>19 use agreement with NCHS for your work in this</p> <p>20 engagement?</p> <p>21 A. No, I did not.</p> <p>22 Q. Okay. When you were working</p> <p>23 with Greylock McKinnon Associates for the</p> <p>24 nuisance report, do you know whether the</p> <p>25 staff at Greylock McKinnon signed a data use</p>

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<p>1 agreement with NCHS?</p> <p>2 MR. SOBOL: Objection. Scope.</p> <p>3 THE WITNESS: As far as I know,</p> <p>4 they did not.</p> <p>5 QUESTIONS BY MR. CARTER:</p> <p>6 Q. Okay. As part of your</p> <p>7 supervision of their work, were you concerned</p> <p>8 whether they were using restricted data</p> <p>9 appropriately?</p> <p>10 MR. SOBOL: Objection.</p> <p>11 THE WITNESS: My understanding</p> <p>12 of where the NCHS data came in was via</p> <p>13 Rosenthal report. If there's -- and</p> <p>14 that's how I'm answering the question.</p> <p>15 And any data use arrangements wouldn't</p> <p>16 have been -- I wouldn't have known</p> <p>17 about them.</p> <p>18 If there's some other NCHS</p> <p>19 piece, then let's take a look.</p> <p>20 QUESTIONS BY MR. CARTER:</p> <p>21 Q. You cited in your nuisance</p> <p>22 report on page 13, I believe, Dr. Perri's</p> <p>23 report, and you discussed that a little bit</p> <p>24 today.</p> <p>25 A. I see that.</p>	<p>1 THE WITNESS: It's something I,</p> <p>2 of course, would benefit from seeing</p> <p>3 what Dr. Perri said, but it doesn't</p> <p>4 seem to be in conflict with what I say</p> <p>5 here.</p> <p>6 QUESTIONS BY MR. CARTER:</p> <p>7 Q. Are you aware of Professor</p> <p>8 Perri's testimony that regardless of the</p> <p>9 various input, regardless of the marketing,</p> <p>10 at the end of the day, physicians have the</p> <p>11 ultimate responsibility for selecting</p> <p>12 medications to prescribe?</p> <p>13 MR. SOBOL: Objection. Scope.</p> <p>14 THE WITNESS: I'm sorry, was I</p> <p>15 aware of what Dr. Perri -- was that</p> <p>16 the question?</p> <p>17 QUESTIONS BY MR. CARTER:</p> <p>18 Q. Yes.</p> <p>19 A. Was I aware of what he said</p> <p>20 about that?</p> <p>21 Q. Yes.</p> <p>22 A. I'm not aware of what he said</p> <p>23 about that.</p> <p>24 Q. Do you agree that regardless of</p> <p>25 the marketing input physicians have the</p>
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<p>1 Q. Okay. And you were asked</p> <p>2 specifically about the question -- or excuse</p> <p>3 me, the statement contained in there where it</p> <p>4 says, "Information doctors were being given</p> <p>5 about the dangers of prescription opioids was</p> <p>6 in most cases false and systematically and</p> <p>7 intentionally misleading."</p> <p>8 Do you recall that?</p> <p>9 A. I do recall that.</p> <p>10 Q. Did you read in preparation for</p> <p>11 your deposition today Dr. -- Professor</p> <p>12 Perri's deposition?</p> <p>13 A. No, I did not.</p> <p>14 Q. If Professor Perri's testimony</p> <p>15 was that he has not made any determination</p> <p>16 whether specific marketing was unlawful,</p> <p>17 false and misleading or whether it was lawful</p> <p>18 and appropriate, if he's made no such</p> <p>19 determination and only looked at the</p> <p>20 marketing in the aggregate, does that impact</p> <p>21 your reliance on his report on page 13 of</p> <p>22 your report?</p> <p>23 MR. SOBOL: Objection. Assumes</p> <p>24 a fact not in evidence.</p> <p>25 You can answer.</p>	<p>1 ultimate responsibility for selecting</p> <p>2 medications to prescribe?</p> <p>3 MR. SOBOL: Objection. Scope.</p> <p>4 THE WITNESS: Well, generally</p> <p>5 physicians help patients determine</p> <p>6 what is the appropriate course of</p> <p>7 treatment.</p> <p>8 QUESTIONS BY MR. CARTER:</p> <p>9 Q. Okay.</p> <p>10 A. In -- you know, not just drugs,</p> <p>11 but in other things, too.</p> <p>12 Q. You were asked about your</p> <p>13 definition of opioids, and it including</p> <p>14 all-comers, prescription opioids, illicit</p> <p>15 opioids. I want to follow up on other</p> <p>16 illicit drugs.</p> <p>17 Do overdose deaths and abuse</p> <p>18 for nonopioid illicit, such as cocaine or</p> <p>19 methamphetamine, do those factors in any way</p> <p>20 into your damages report?</p> <p>21 A. I don't think directly, no.</p> <p>22 Q. Okay. You agree it would be</p> <p>23 improper to include estimates in your</p> <p>24 opinions of damages chargeable to the</p> <p>25 defendants on account of cocaine abuse and</p>

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<p>1 overdose deaths, correct?</p> <p>2 MR. SOBOL: Objection. Scope.</p> <p>3 THE WITNESS: Well, you know, I</p> <p>4 interpreted my task as identifying</p> <p>5 opioid-related deaths due to</p> <p>6 shipments. And people die from other</p> <p>7 things, but that's what I attempted to</p> <p>8 identify.</p> <p>9 QUESTIONS BY MR. CARTER:</p> <p>10 Q. Does your nuisance report</p> <p>11 include any damages related to cocaine abuse</p> <p>12 and overdose?</p> <p>13 MR. SOBOL: Objection. Form.</p> <p>14 You can answer.</p> <p>15 THE WITNESS: I'm thinking</p> <p>16 where it might come in.</p> <p>17 You know, if, in the elevated</p> <p>18 health care costs section, any of</p> <p>19 those elevated costs are associated</p> <p>20 with, you know, a range of other</p> <p>21 health care treatments, then different</p> <p>22 things could have figured into that</p> <p>23 estimation.</p> <p>24 QUESTIONS BY MR. CARTER:</p> <p>25 Q. Do you -- sitting here today,</p>	<p>1 Q. Do you know how those rates</p> <p>2 compare historically over the years to the</p> <p>3 rates dealing with prescription opioids?</p> <p>4 MR. SOBOL: Objection. Asked</p> <p>5 and answered. Scope.</p> <p>6 THE WITNESS: I didn't study</p> <p>7 that.</p> <p>8 QUESTIONS BY MR. CARTER:</p> <p>9 Q. Okay. What about with respect</p> <p>10 to the indigent defendant category? Do you</p> <p>11 know the costs to the indigent defendant with</p> <p>12 those division expenditures related to</p> <p>13 cocaine abuse?</p> <p>14 MR. SOBOL: Objection. Scope.</p> <p>15 THE WITNESS: I missed -- the</p> <p>16 indigent what?</p> <p>17 QUESTIONS BY MR. CARTER:</p> <p>18 Q. The indigent defendants?</p> <p>19 A. Indigent defendants.</p> <p>20 Q. Yes.</p> <p>21 One of the divisions that you</p> <p>22 deal with in the court system, one of those</p> <p>23 line item costs is indigent defendant cases,</p> <p>24 correct?</p> <p>25 A. Oh, okay.</p>
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<p>1 did cocaine costs find their way into your</p> <p>2 economic analysis for your nuisance report?</p> <p>3 MR. SOBOL: Objection. Form.</p> <p>4 You can answer.</p> <p>5 THE WITNESS: Yeah, cocaine</p> <p>6 costs -- what do you mean by "cocaine</p> <p>7 costs"?</p> <p>8 QUESTIONS BY MR. CARTER:</p> <p>9 Q. Costs that any of the divisions</p> <p>10 of either of the counties incurred as a</p> <p>11 result of addressing cocaine.</p> <p>12 A. Addressing. Oh, you mean</p> <p>13 government expenditures?</p> <p>14 Q. Yes.</p> <p>15 A. So we're talking damages now.</p> <p>16 So in terms of damages, I don't</p> <p>17 think so.</p> <p>18 Q. Do you know -- well, strike</p> <p>19 that.</p> <p>20 When you were coming up with</p> <p>21 your division costs for the jail, do you know</p> <p>22 the rate of expenditures related to dealing</p> <p>23 with cocaine -- crimes involving cocaine?</p> <p>24 A. The rate of expenditures. I</p> <p>25 didn't investigate that.</p>	<p>1 MR. SOBOL: You don't mean the</p> <p>2 distributors and manufacturers that</p> <p>3 are indigent here.</p> <p>4 THE WITNESS: Okay. That's</p> <p>5 where I was confused here.</p> <p>6 So it's not -- I thought it was</p> <p>7 defendants in this litigation, but you</p> <p>8 mean defendants in the legal process.</p> <p>9 QUESTIONS BY MR. CARTER:</p> <p>10 Q. Yes.</p> <p>11 A. So would you mind asking me</p> <p>12 again?</p> <p>13 Q. Sure.</p> <p>14 One of the divisions that you</p> <p>15 looked at in the counties related to</p> <p>16 expenditures in indigent defendant cases in</p> <p>17 the counties, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Do you know the rate of</p> <p>20 expenditures related to cocaine abuse in</p> <p>21 either county for any year that you looked</p> <p>22 at?</p> <p>23 MR. SOBOL: Objection. Scope.</p> <p>24 Form.</p> <p>25 THE WITNESS: I didn't study</p>

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<p>1 that.</p> <p>2 QUESTIONS BY MR. CARTER:</p> <p>3 Q. Okay. I want to go back to</p> <p>4 what I was trying to find earlier. It was</p> <p>5 page 12 of your damages report.</p> <p>6 And at the top of the page, the</p> <p>7 paragraph that continues from the previous</p> <p>8 page, towards the end, the second to the last</p> <p>9 sentence of that paragraph reads as follows:</p> <p>10 "This, in turn, implies that some harms, and</p> <p>11 thus damages to bellwether governments, could</p> <p>12 have been avoided if distributor defendants</p> <p>13 had not acted improperly."</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes, you did.</p> <p>16 Q. So do you stand by that</p> <p>17 statement?</p> <p>18 A. Let me just take a look at the</p> <p>19 paragraph since there's some thuses in there.</p> <p>20 Yes, I do stand by it.</p> <p>21 Q. Okay. So do you agree that if</p> <p>22 the defendant distributors in this case had</p> <p>23 only and exclusively acted in a way that you</p> <p>24 would consider to be compliant with the law</p> <p>25 and had done nothing allegedly improper, that</p>	<p>1 empirical work didn't cover 2018, but it went</p> <p>2 up to 2016. And he estimated the share of</p> <p>3 illicit deaths that were attributable to</p> <p>4 shipments.</p> <p>5 And that's an analysis about</p> <p>6 the ultimate cause, which is going back to</p> <p>7 what set the chain of events in motion. That</p> <p>8 was what he determined.</p> <p>9 Q. And I want to put Professor</p> <p>10 Cutler out of my question.</p> <p>11 My question is: Do you have an</p> <p>12 expert opinion as to the ultimate cause?</p> <p>13 MR. SOBOL: Objection. Scope.</p> <p>14 THE WITNESS: Well, I would</p> <p>15 rely on Professor Cutler for that.</p> <p>16 QUESTIONS BY MR. CARTER:</p> <p>17 Q. Okay. Do you have any</p> <p>18 separate, independent opinion to add, or</p> <p>19 would you just repeat what Professor Cutler</p> <p>20 would have on that point?</p> <p>21 MR. SOBOL: Objection. Scope.</p> <p>22 THE WITNESS: Well, I didn't</p> <p>23 study that personally. He did a very</p> <p>24 good job, and I'm very happy to rely</p> <p>25 on what he did.</p>
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<p>1 there would still be damages in this case?</p> <p>2 MR. SOBOL: Objection. Scope.</p> <p>3 You can answer.</p> <p>4 THE WITNESS: I'm not sure.</p> <p>5 QUESTIONS BY MR. CARTER:</p> <p>6 Q. Do you agree that illicit</p> <p>7 fentanyl is the overwhelming cause of</p> <p>8 overdose death in Summit County currently?</p> <p>9 MR. SOBOL: Objection.</p> <p>10 THE WITNESS: "Cause" is an</p> <p>11 important word here, and it's the</p> <p>12 proximate cause. It may not be the</p> <p>13 ultimate cause.</p> <p>14 QUESTIONS BY MR. CARTER:</p> <p>15 Q. Okay. So what's the ultimate</p> <p>16 cause, if not illicit Chinese fentanyl, in</p> <p>17 Summit County currently?</p> <p>18 A. Well, this is something that</p> <p>19 Professor Cutler studied, very explicitly.</p> <p>20 Q. Do you have an expert opinion</p> <p>21 as to the ultimate cause?</p> <p>22 A. Well, with respect to the</p> <p>23 ultimate cause, Professor Cutler looked</p> <p>24 directly at illicit drugs in a post-2010</p> <p>25 period, including up through -- I guess his</p>	<p>1 QUESTIONS BY MR. CARTER:</p> <p>2 Q. Same question for Cuyahoga</p> <p>3 County: Do you yourself have an opinion</p> <p>4 regarding the overwhelming cause of overdose</p> <p>5 death currently in Cuyahoga County?</p> <p>6 A. Well, in that case as well, I</p> <p>7 didn't conduct an independent study. I</p> <p>8 relied on the opinions of Professor Cutler.</p> <p>9 Q. Okay. With respect to your</p> <p>10 damages calculations, do the estimates in</p> <p>11 your damage report account for any progress</p> <p>12 increased deficiencies in opioid-related</p> <p>13 expenditures on behalf of the county?</p> <p>14 A. I'm not sure what you mean by</p> <p>15 that.</p> <p>16 Q. For example, does it take into</p> <p>17 account whether, over the years, Cuyahoga</p> <p>18 County, for example, improved its addiction</p> <p>19 interventions related to opioids?</p> <p>20 MR. SOBOL: Objection.</p> <p>21 THE WITNESS: And then the</p> <p>22 question was, does my analysis take</p> <p>23 that into account?</p> <p>24 QUESTIONS BY MR. CARTER:</p> <p>25 Q. Yes.</p>

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<p style="text-align: right;">Page 825</p> <p>1 A. The approach of opportunity 2 costs, again, doesn't require me to determine 3 the -- whatever value is received for the 4 services -- for the dollars that were 5 directed to opioid-related activities. So I 6 don't need to do that. 7 Q. Does your approach to 8 opportunity costs require any assessment of 9 the propriety of the spending? 10 A. By "propriety" you mean -- 11 Q. Whether it's done efficiently, 12 whether it's done as an appropriate steward 13 of the county's money or whether it's 14 wasteful. 15 Does it make any normative 16 judgment as to the propriety of the 17 expenditures that are made? 18 A. The judgment is that, you know, 19 whether you got -- coming back to my car 20 example, whether or not the car repair shop 21 did a very good job or did a very bad job, it 22 still cost you \$75 to get that, and the \$75 23 could have been devoted to something else. 24 And so I think then in answer 25 to your question, if you consider propriety</p>	<p style="text-align: right;">Page 827</p> <p>1 report of Professor Cutler. 2 QUESTIONS BY MR. CARTER: 3 Q. Switching gears to the Summit 4 County indigent defendants' point. 5 Do you know what rate the State 6 of Ohio reimburses the county for the outside 7 appointed counsel? 8 A. No, I'm sorry, I don't know 9 that. 10 Q. Do you know that the State of 11 Ohio does, in fact, reimburse Summit County 12 for the expenditures to outside counsel 13 appointed in indigent defendant cases? 14 A. I'm not aware of that. 15 Q. Are you aware that the State of 16 Ohio also reimburses Cuyahoga County for 17 appointment of counsel in indigent defendant 18 cases? 19 A. I'm not aware of that. 20 Q. If the State of Ohio reimburses 21 Summit County and Cuyahoga County between 40 22 and 50 percent for the cost of those 23 expenditures, would you make any adjustments 24 to that category of division expenditures in 25 your damages report?</p>
<p style="text-align: right;">Page 826</p> <p>1 to be what -- how good a job they did, then 2 it's not part of what I needed to know. 3 Q. Switching gears. 4 In the course of your analysis 5 of the medical examiner division, is one of 6 the things you looked at autopsies related to 7 opioid-related incidents? 8 A. That was part of the data that 9 fed in, yes. 10 Q. In the course of analyzing that 11 data, did you control for suicides caused by 12 opioids? 13 A. I wasn't controlling for 14 things, so I'm not sure what you're getting 15 at here. 16 Q. So did you exclude from the 17 data of opioid-related deaths, opioid-related 18 deaths caused by suicide? 19 MR. SOBOL: Objection. Asked 20 and answered. 21 THE WITNESS: Okay. It wasn't 22 necessary for me to exclude suicides 23 given the methodology I was applying, 24 which relied on the share of deaths 25 attributable to shipments from the</p>	<p style="text-align: right;">Page 828</p> <p>1 A. Well, I think as you know, the 2 damages methodology was intended to identify 3 expenditures by the bellwether governments on 4 opioid-related activities. 5 And I investigated the degree 6 to which some of those expenditures would 7 have been supported by other levels of 8 government. I found some, and I deducted 9 them. 10 I'm -- I think your -- if what 11 you're saying has some basis, then it's 12 something I would want to look at. 13 Q. So to use your car example, if 14 you paid \$75 to repair your car, walked out 15 of the dealer and I gave you \$75, would that 16 still be an opportunity cost? 17 MR. SOBOL: Objection. Form. 18 THE WITNESS: The -- it 19 would -- the \$75 would still be an 20 opportunity cost. The question would 21 be who bears that opportunity cost. 22 And just to change your example 23 slightly, which I think is also in the 24 spirit of your question, suppose you 25 were insured and your insurer paid up</p>

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<p>1 to \$50 for a repair, and then you only</p> <p>2 paid \$25. So the opportunity cost</p> <p>3 from the standpoint of you, the</p> <p>4 household, would be \$25.</p> <p>5 QUESTIONS BY MR. CARTER:</p> <p>6 Q. Thank you.</p> <p>7 You also discussed earlier</p> <p>8 today the national rates of opioid use</p> <p>9 disorder. I want to follow up on that.</p> <p>10 Do you know the criteria for an</p> <p>11 opioid use disorder?</p> <p>12 A. The medical criteria?</p> <p>13 Q. Yes.</p> <p>14 A. Broadly.</p> <p>15 Q. Okay. What is your</p> <p>16 understanding of those criteria?</p> <p>17 A. Well, this is similar to many</p> <p>18 mental health diagnoses. There's a set of</p> <p>19 kind of questions, there may be even</p> <p>20 something like 12, which you could call</p> <p>21 criteria for receiving a diagnosis.</p> <p>22 And then if the respondent has</p> <p>23 a yes to some subset of those, perhaps, say,</p> <p>24 7 of the 12, and this interferes with their</p> <p>25 normal activities and they occur over a</p>	<p>1 doctor might ask a patient a question about</p> <p>2 something. And the design of that question</p> <p>3 pattern is something I've done research on</p> <p>4 for mental health and substance abuse</p> <p>5 diagnoses.</p> <p>6 Q. You indicated that you've never</p> <p>7 been asked to make a diagnosis. So if</p> <p>8 someone did ask you to make a diagnosis, you</p> <p>9 would decline to do so, correct?</p> <p>10 A. If someone asked me to make a</p> <p>11 medical diagnosis, I would say, "You need to</p> <p>12 talk to a physician."</p> <p>13 Q. Okay. And the criteria for</p> <p>14 opioid use disorder was first articulated in</p> <p>15 the DSM-V, correct?</p> <p>16 A. Oh, I'm not sure where it was</p> <p>17 first articulated.</p> <p>18 Q. The portion cited in your</p> <p>19 report cites the DSM-V articulation, correct?</p> <p>20 A. That sounds right.</p> <p>21 Q. And are you aware that the</p> <p>22 DSM-V articulation of an opioid use disorder</p> <p>23 has three different severity classifications</p> <p>24 of an opioid use disorder?</p> <p>25 A. Generally I was familiar with</p>
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<p>1 sufficient period of time, then the</p> <p>2 individual would be diagnosed.</p> <p>3 Of course, doctors do the</p> <p>4 diagnosis. But there's a protocol by which</p> <p>5 this diagnosis takes place that indicate that</p> <p>6 the person has opioid use disorder.</p> <p>7 Q. Have you ever made a diagnosis</p> <p>8 of opioid use disorder?</p> <p>9 A. Well, I'm not a physician, so</p> <p>10 I'm not -- I was never asked to diagnose</p> <p>11 anyone.</p> <p>12 But this is the kind of thing</p> <p>13 that if I'm studying an area -- mental health</p> <p>14 and substance abuse is something that I</p> <p>15 studied a lot, and not only those areas --</p> <p>16 then this is the kind of thing you need to be</p> <p>17 at least somewhat familiar with.</p> <p>18 Q. And if someone asked you --</p> <p>19 A. And -- I'm sorry. I have one</p> <p>20 more thing to add.</p> <p>21 Q. Sure.</p> <p>22 A. I've done research on the</p> <p>23 criteria that would be used to identify</p> <p>24 people with disease. A lot of these</p> <p>25 protocols are based on a question, so a</p>	<p>1 that, yes.</p> <p>2 Q. Do you know what the three</p> <p>3 classifications of severity are in DSM-V?</p> <p>4 A. One of them's severe.</p> <p>5 Q. That's correct.</p> <p>6 Do you know the other two?</p> <p>7 A. I would be guessing. I would</p> <p>8 say mild? Yes?</p> <p>9 Q. That is correct.</p> <p>10 A. And not otherwise classified?</p> <p>11 Q. Yeah. So mild, moderate and</p> <p>12 severe.</p> <p>13 A. Okay.</p> <p>14 Q. In the course of using the</p> <p>15 statistics for the opioid use disorder</p> <p>16 prevalence in the counties, did you identify</p> <p>17 or quantify in any way the breakdown within</p> <p>18 that prevalence of those that would have a</p> <p>19 mild opioid use disorder, those who would</p> <p>20 have a moderate opioid use disorder, and</p> <p>21 those who would have a severe opioid use</p> <p>22 disorder?</p> <p>23 A. Well, yes, my analysis was</p> <p>24 based on the SOUD, which is a severe opioid</p> <p>25 use disorder.</p>

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<p>1 Q. Okay.</p> <p>2 A. So and that's important,</p> <p>3 because that is one area in which my work is</p> <p>4 very conservative, to not take into account</p> <p>5 any effects that are working through people</p> <p>6 who might have mild or a moderate disorder.</p> <p>7 Q. Do you know the prevalence rate</p> <p>8 based on the national data for mild or</p> <p>9 moderate opioid use disorder?</p> <p>10 A. You know, I'm not sure.</p> <p>11 Q. Based on your studies, do you</p> <p>12 know -- are you familiar with DSM-V's</p> <p>13 guidance to professionals using DSM-V in a</p> <p>14 forensic setting?</p> <p>15 A. In a forensic setting?</p> <p>16 Q. Well, you didn't use it in this</p> <p>17 case in a clinical setting, did you?</p> <p>18 A. I used it in an epidemiology --</p> <p>19 epidemiologic setting, I would say.</p> <p>20 Q. And so in a forensic setting,</p> <p>21 are you familiar with the guidance for how</p> <p>22 DSM-V is to be used?</p> <p>23 A. In general?</p> <p>24 Q. Yes.</p> <p>25 A. No, I don't know the</p>	<p>1 Cuyahoga or Summit County to lead to the</p> <p>2 conclusion that it was appropriate to use in</p> <p>3 this case?</p> <p>4 A. Well, I didn't apply</p> <p>5 independent clinical judgment.</p> <p>6 MR. CARTER: Okay. Based on</p> <p>7 time, those are the questions I have</p> <p>8 for you. I'm going to hand the mic to</p> <p>9 another attorney.</p> <p>10 Can we go off the record?</p> <p>11 VIDEOGRAPHER: The time is</p> <p>12 5:17 p.m., and we're off the record.</p> <p>13 (Off the record at 5:17 p.m.)</p> <p>14 VIDEOGRAPHER: The time is</p> <p>15 5:19 p.m., and we're on the record.</p> <p>16 CROSS-EXAMINATION</p> <p>17 QUESTIONS BY MR. HALLER:</p> <p>18 Q. Professor McGuire, I'm David</p> <p>19 Haller of Covington & Burling.</p> <p>20 Are you able to point me to any</p> <p>21 accounting records or budget requests from</p> <p>22 either county which documented any</p> <p>23 reallocation of resources, either of employee</p> <p>24 time or other recourses, from one area to be</p> <p>25 redirected to opioid-related activities?</p>
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<p>1 distinction.</p> <p>2 Q. Are you familiar with the</p> <p>3 guidance in DSM-V that the diagnostic codes</p> <p>4 contained within are not to be used in a</p> <p>5 checklist or a cookbook fashion?</p> <p>6 A. Can you repeat that?</p> <p>7 Q. Are you familiar with DSM-V's</p> <p>8 guidance that the criteria contained within</p> <p>9 it are not to be used as a checklist or a</p> <p>10 cookbook?</p> <p>11 A. In a forensic context or in</p> <p>12 just a general --</p> <p>13 Q. In all contexts.</p> <p>14 A. Well, I told you what I was</p> <p>15 familiar with, that there is a, you know, a</p> <p>16 set of questions and there's time period and</p> <p>17 there's severity.</p> <p>18 Q. Okay. Do you know in your</p> <p>19 research on DSM-V that it's meant to be used</p> <p>20 with the application of clinical judgment?</p> <p>21 A. Generally that's the case, yes.</p> <p>22 Q. Okay. And in adopting the</p> <p>23 prevalence rate from the national data that</p> <p>24 you reviewed, did you apply any independent</p> <p>25 clinical judgment to the populations in</p>	<p>1 MR. SOBOL: Objection. Asked</p> <p>2 and answered.</p> <p>3 THE WITNESS: This is a</p> <p>4 question we spent quite a bit of time</p> <p>5 on this morning, and it's important to</p> <p>6 keep in mind that my objective in this</p> <p>7 report is to identify the funds</p> <p>8 devoted to opioid-related activities</p> <p>9 and interpret those as economic</p> <p>10 opportunity costs, which is what I</p> <p>11 tried to do in my report.</p> <p>12 And the question of whether</p> <p>13 there may or may not have been a</p> <p>14 budget document requesting</p> <p>15 reallocation isn't necessary for me to</p> <p>16 be able to make that determination.</p> <p>17 QUESTIONS BY MR. HALLER:</p> <p>18 Q. My question wasn't whether it's</p> <p>19 necessary, just whether you did it.</p> <p>20 MR. SOBOL: Objection.</p> <p>21 QUESTIONS BY MR. HALLER:</p> <p>22 Q. Did you look for any such</p> <p>23 documents?</p> <p>24 MR. SOBOL: Objection. Asked</p> <p>25 and answered.</p>

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<p style="text-align: right;">Page 837</p> <p>1 THE WITNESS: In order to give</p> <p>2 a clear and complete answer to this</p> <p>3 question, I think it's important,</p> <p>4 rather than just say yes or no --</p> <p>5 QUESTIONS BY MR. HALLER:</p> <p>6 Q. Can you include yes or no in</p> <p>7 your answer, at least?</p> <p>8 MR. SOBOL: Do you want to</p> <p>9 withdraw the question? You want to</p> <p>10 ask him a question? Do you want to</p> <p>11 interrupt him? What do you want to</p> <p>12 do?</p> <p>13 MR. HALLER: He's going to give</p> <p>14 a very long question -- a very long</p> <p>15 response, and I'd like to make sure</p> <p>16 yes or no is somewhere in there.</p> <p>17 MR. SOBOL: Well, he'll answer</p> <p>18 the question as he can truthfully tell</p> <p>19 it, not without any coaching by you.</p> <p>20 MR. HALLER: I think coaching</p> <p>21 is your primary domain.</p> <p>22 MR. SOBOL: I'm Bill Belichick,</p> <p>23 so I don't mind being called a coach.</p> <p>24 Go ahead, Professor. If you</p> <p>25 can answer the question in a truthful</p>	<p style="text-align: right;">Page 839</p> <p>1 QUESTIONS BY MR. HALLER:</p> <p>2 Q. I asked you to include</p> <p>3 somewhere in your long speech a yes or no</p> <p>4 response to my question, which was whether</p> <p>5 you did it.</p> <p>6 MR. SOBOL: Well, again, he</p> <p>7 gets to answer the question as best he</p> <p>8 can and not --</p> <p>9 MR. HALLER: If you have an</p> <p>10 objection, say objection and then</p> <p>11 leave it at that.</p> <p>12 MR. SOBOL: No, I'll say</p> <p>13 whatever I feel like.</p> <p>14 MR. HALLER: You're going to</p> <p>15 continue being the bully you've been</p> <p>16 for two days? Is that what you're</p> <p>17 going to do?</p> <p>18 Objection. Yes or no?</p> <p>19 MR. SOBOL: Professor, you can</p> <p>20 answer the question as truthfully as</p> <p>21 you can without having to include</p> <p>22 words that are required by the</p> <p>23 examining attorney.</p> <p>24 THE WITNESS: I think I can be</p> <p>25 completely responsive to your</p>
<p style="text-align: right;">Page 838</p> <p>1 way, go ahead.</p> <p>2 THE WITNESS: I think I can</p> <p>3 answer the question.</p> <p>4 But it is important to know,</p> <p>5 for an audience or a reader of my</p> <p>6 deposition transcript, to understand</p> <p>7 that my objective in conducting my</p> <p>8 report was to identify spending by the</p> <p>9 bellwethers on opioid-related</p> <p>10 activities, which is -- which</p> <p>11 corresponds to the very well-regarded,</p> <p>12 down-the-middle-of-the-plate concept</p> <p>13 of economic opportunity costs.</p> <p>14 And using that well-accepted</p> <p>15 approach does not require me to</p> <p>16 identify what other services the</p> <p>17 bellwether counties did or would have</p> <p>18 wanted to spend those funds on.</p> <p>19 So, no, it was not necessary</p> <p>20 for me to do that.</p> <p>21 QUESTIONS BY MR. HALLER:</p> <p>22 Q. And, no, you did not do that;</p> <p>23 is that right?</p> <p>24 MR. SOBOL: Objection. Asked</p> <p>25 and answered.</p>	<p style="text-align: right;">Page 840</p> <p>1 question.</p> <p>2 MR. HALLER: Thank you.</p> <p>3 THE WITNESS: And I regard it</p> <p>4 to be an important question since it</p> <p>5 was asked so many times.</p> <p>6 And the answer is the same:</p> <p>7 that the purpose of my report was to</p> <p>8 identify the opioid-related spending</p> <p>9 of the various divisions in the</p> <p>10 bellwether governments for various</p> <p>11 years, and that's what I did.</p> <p>12 The interpretation of that</p> <p>13 spending is economic opportunity</p> <p>14 costs. That tells me what I need to</p> <p>15 know in order to answer my assignment.</p> <p>16 It was not necessary for me to</p> <p>17 know how else the funds might have</p> <p>18 been used and what other possible</p> <p>19 desired targets that the bellwether</p> <p>20 divisions had to for those funds.</p> <p>21 So it was not necessary, and I</p> <p>22 didn't do it.</p> <p>23 QUESTIONS BY MR. HALLER:</p> <p>24 Q. Thank you.</p> <p>25 You started out today talking</p>

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<p>1 about a conversation you had had with Compass</p> <p>2 Lexecon about OUD prevalence between the time</p> <p>3 of your first day of deposition and today.</p> <p>4 Do you remember that?</p> <p>5 A. I do, yeah.</p> <p>6 Q. I take it before you made that</p> <p>7 call, you reviewed your report section</p> <p>8 concerning OUD prevalence; is that right?</p> <p>9 A. Yes, that's right.</p> <p>10 Q. And what was it that was in --</p> <p>11 how was it that your report wasn't</p> <p>12 sufficiently clear to you such that you</p> <p>13 needed clarification from Compass Lexecon?</p> <p>14 What was it that wasn't</p> <p>15 sufficiently clear?</p> <p>16 A. Well, I -- there's lots of</p> <p>17 things that one has to keep in mind in a</p> <p>18 deposition. And what is clear, you know, to</p> <p>19 me in rereading my report -- what I said to</p> <p>20 myself is, well, let's go over this again</p> <p>21 verbally so I'm in a better position to</p> <p>22 answer questions about it.</p> <p>23 So I just wanted to go over the</p> <p>24 calculations of the OUD rate again so I would</p> <p>25 be able to answer questions more carefully</p>	<p>1 chances are very good that one of them or</p> <p>2 more was a county employee.</p> <p>3 Q. But you don't know for a fact</p> <p>4 whether any were; is that right?</p> <p>5 A. No. As I said, this was, I</p> <p>6 think, a reasonable inference on my part.</p> <p>7 Q. But do you know for a fact</p> <p>8 whether any of them were?</p> <p>9 MR. SOBOL: Objection. Asked</p> <p>10 and answered already.</p> <p>11 THE WITNESS: I thought it was</p> <p>12 a reasonable inference on my part.</p> <p>13 QUESTIONS BY MR. HALLER:</p> <p>14 Q. Do you know the difference</p> <p>15 between drawing a reasonable inference and</p> <p>16 knowing something for a fact?</p> <p>17 MR. SOBOL: Objection.</p> <p>18 You can answer --</p> <p>19 QUESTIONS BY MR. HALLER:</p> <p>20 Q. Are those the same things to</p> <p>21 you?</p> <p>22 A. No, I understand the</p> <p>23 difference.</p> <p>24 Q. Okay. So I want to just know</p> <p>25 whether you know for a fact whether any of</p>
Page 842	Page 844
<p>1 and more completely.</p> <p>2 Q. Sorry.</p> <p>3 Do you remember what in</p> <p>4 particular in your report wasn't sufficiently</p> <p>5 clear to you such that you needed</p> <p>6 clarification?</p> <p>7 A. Well, I wouldn't put it that</p> <p>8 way. It wasn't that there was something that</p> <p>9 wasn't clear to me. I just found it helpful</p> <p>10 to talk through some of the operations. It</p> <p>11 helps set things in my mind.</p> <p>12 Q. Now, in reference to mortality,</p> <p>13 earlier today you stated that some of the</p> <p>14 people who died in the two counties would</p> <p>15 have been county employees.</p> <p>16 Do you remember that?</p> <p>17 A. Yes, I do remember that.</p> <p>18 Q. Do you in fact know whether or</p> <p>19 not anyone who died in Summit or Cuyahoga</p> <p>20 from an opioid overdose was in fact a county</p> <p>21 employee?</p> <p>22 A. I think you're -- I mean, the</p> <p>23 point of your question seems correct, that</p> <p>24 that was an inference on my part, that there</p> <p>25 were thousands of people who died, and</p>	<p>1 the employees -- whether any of the opioid</p> <p>2 overdose victims were in fact county</p> <p>3 employees.</p> <p>4 MR. SOBOL: Objection. Asked</p> <p>5 and answered four times.</p> <p>6 THE WITNESS: My statement,</p> <p>7 when that was brought about -- we just</p> <p>8 discussed that today -- was an</p> <p>9 inference on my part. It was not a</p> <p>10 fact.</p> <p>11 QUESTIONS BY MR. HALLER:</p> <p>12 Q. Okay. Are you aware whether</p> <p>13 the statistics given to you from Professor</p> <p>14 Cutler and Professor Rosenthal on which you</p> <p>15 relied were national statistics or whether</p> <p>16 they were Cuyahoga or Summit County-specific?</p> <p>17 MR. SOBOL: Objection. Form.</p> <p>18 Which statistics?</p> <p>19 MR. HALLER: The harm</p> <p>20 percentages.</p> <p>21 THE WITNESS: Well, there</p> <p>22 are -- it still depends on what</p> <p>23 statistics you're talking about.</p> <p>24 QUESTIONS BY MR. HALLER:</p> <p>25 Q. The Cutler harm percentages, do</p>

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<p>1 you know whether those were national 2 statistics or Summit and Cuyahoga-specific? 3 MR. SOBOL: Objection. Form. 4 THE WITNESS: The Cutler 5 statistics, of which there's more than 6 one in the report -- more than one set 7 in the report, were primarily based on 8 an econometric analysis of what he 9 referred to in his report as large 10 counties that included Cuyahoga and 11 Summit. And in total, I think it was 12 around 300 counties or so. 13 And his estimated shares of 14 harms due to shipments was a -- kind 15 of a summary number coming from that 16 set of counties. 17 QUESTIONS BY MR. HALLER: 18 Q. And similarly with regard to 19 Professor Rosenthal, are you aware of whether 20 her misconduct percentages, whether those 21 were in relation to national detailing 22 efforts or whether those were specific to 23 Cuyahoga and Summit? 24 MR. SOBOL: Objection. Form. 25 Which?</p>	<p>1 yesterday -- last week and today regarding 2 certain quantitative inputs you received from 3 Dr. Cutler's report, correct? 4 A. Yes. 5 Q. Does your model depend upon the 6 particular quantification of Dr. Cutler's 7 shares in order for it to be operative? 8 MR. KEYES: Objection. Form. 9 THE WITNESS: Can I answer? 10 MR. SOBOL: Yes. 11 THE WITNESS: My model would 12 work as well with other estimated 13 shares from Cutler. 14 MR. SOBOL: Nothing further. 15 RECROSS-EXAMINATION 16 QUESTIONS BY MR. HALLER: 17 Q. Does your report reflect that 18 additional work you'd need to do, or is that 19 work you would have to do subsequently? 20 A. It's very straightforward math. 21 So, I mean, I didn't do alternative 22 calculations except with regard to Cutler 23 Approach 1 and Cutler Approach 2. That, I 24 think, illustrates exactly the thing we're 25 talking about now: that if the percentages</p>
Page 846	Page 848
<p>1 But you can answer. 2 THE WITNESS: Well, Rosenthal's 3 statistics are somewhat different. 4 She used national statistics on 5 shipments and as her dependent 6 variable, and then national-level 7 information on detailing as her key 8 independent variable. 9 So her percentages were based 10 on a kind of national average. 11 MR. SOBOL: Okay. I think 12 that's it. 13 MR. HALLER: Well, I have many 14 more questions. I do think you used 15 up, Counsel, a good 30-plus minutes in 16 speaking objections and snide remarks, 17 and I think we have a right to 18 another, at least, 30 minutes. 19 MR. SOBOL: Well, that's -- no, 20 you don't. 21 CROSS-EXAMINATION 22 QUESTIONS BY MR. SOBOL: 23 Q. Professor McGuire, I have a 24 couple of questions for you. 25 You testified several times</p>	<p>1 were somewhat different, as they were in the 2 two approaches, then it's -- you know, it's 3 an Excel operation, really, to be able to 4 determine damages. 5 Q. But that doesn't appear in your 6 report, correct? 7 MR. SOBOL: Objection. 8 THE WITNESS: Yes, it does. 9 QUESTIONS BY MR. HALLER: 10 Q. The alternative calculations 11 appear in your report or they don't? 12 A. Yes, they do. 13 Q. Where are they? 14 A. This is what's referred to as 15 Approach 1 and Approach 2. 16 Q. No, I'm saying apart from 17 Approach 1 and Approach 2. If there were 18 additional -- initial quanti -- 19 quantification done by Professor Cutler, you 20 would need to do additional work yourself, 21 right? 22 A. What I indicated was that 23 the -- and I thought the question was, does 24 my report -- do my damages estimates apply -- 25 could they be determined with other Cutler</p>

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<p style="text-align: right;">Page 849</p> <p>1 percentages.</p> <p>2 And the answer is, yes, it's</p> <p>3 easy. And the fact that I did it for</p> <p>4 Approach 1 and Approach 2, which involved</p> <p>5 different Cutler numbers, indicates the</p> <p>6 readily available calculations I could make.</p> <p>7 MR. SOBOL: Time's up. Thank</p> <p>8 you very much, everybody.</p> <p>9 VIDEOGRAPHER: The time is 7 --</p> <p>10 or 6:30 p.m., and this deposition has</p> <p>11 concluded and we're off the record.</p> <p>12 5:30.</p> <p>13 MR. CARTER: Obviously, you</p> <p>14 know, defendants reserve the right to</p> <p>15 seek additional time based on the</p> <p>16 extensive speeches by the witness and</p> <p>17 the speaking objections, but we'll</p> <p>18 deal with that offline.</p> <p>19 (Deposition concluded at 5:31 p.m.)</p> <p>20 -----</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 851</p> <p>1 INSTRUCTIONS TO WITNESS</p> <p>2</p> <p>3 Please read your deposition over</p> <p>4 carefully and make any necessary corrections.</p> <p>5 You should state the reason in the</p> <p>6 appropriate space on the errata sheet for any</p> <p>7 corrections that are made.</p> <p>8 After doing so, please sign the</p> <p>9 errata sheet and date it. You are signing</p> <p>10 same subject to the changes you have noted on</p> <p>11 the errata sheet, which will be attached to</p> <p>12 your deposition.</p> <p>13 It is imperative that you return</p> <p>14 the original errata sheet to the deposing</p> <p>15 attorney within thirty (30) days of receipt</p> <p>16 of the deposition transcript by you. If you</p> <p>17 fail to do so, the deposition transcript may</p> <p>18 be deemed to be accurate and may be used in</p> <p>19 court.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 850</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I, CARRIE A. CAMPBELL, Registered</p> <p>4 Diplomat Reporter, Certified Realtime</p> <p>5 Reporter and Certified Shorthand Reporter, do</p> <p>6 hereby certify that prior to the commencement</p> <p>7 of the examination, Thomas G. McGuire, PhD,</p> <p>8 was duly sworn by me to testify to the truth,</p> <p>9 the whole truth and nothing but the truth.</p> <p>10 I DO FURTHER CERTIFY that the</p> <p>11 foregoing is a verbatim transcript of the</p> <p>12 testimony as taken stenographically by and</p> <p>13 before me at the time, place and on the date</p> <p>14 hereinbefore set forth, to the best of my</p> <p>15 ability.</p> <p>16</p> <p>17 I DO FURTHER CERTIFY that I am</p> <p>18 neither a relative nor employee nor attorney</p> <p>19 nor counsel of any of the parties to this</p> <p>20 action, and that I am neither a relative nor</p> <p>21 employee of such attorney or counsel, and</p> <p>22 that I am not financially interested in the</p> <p>23 action.</p> <p>24</p> <p>25</p> <p>17 CARRIE A. CAMPBELL,</p> <p>18 NCRA Registered Diplomat Reporter</p> <p>19 Certified Realtime Reporter</p> <p>20 Notary Public</p> <p>21 Dated: May 1, 2019</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 852</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3</p> <p>4 I, _____, do</p> <p>5 hereby certify that I have read the foregoing</p> <p>6 pages and that the same is a correct</p> <p>7 transcription of the answers given by me to</p> <p>8 the questions therein propounded, except for</p> <p>9 the corrections or changes in form or</p> <p>10 substance, if any, noted in the attached</p> <p>11 Errata Sheet.</p> <p>12</p> <p>13 _____</p> <p>14 Thomas G. McGuire, Ph.D. DATE</p> <p>15</p> <p>16 Subscribed and sworn to before me this</p> <p>17 _____ day of _____, 20 ____.</p> <p>18 My commission expires: _____</p> <p>19</p> <p>20 Notary Public</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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ERRATA

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PAGE	LINE	CHANGE/REASON
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4

<u>508</u>	<u>13</u>	<u>"Yesterday" should be "last week" / Clarification</u>
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<u>610</u>	<u>10</u>	<u>"Cider" should be "Sider" / Transcription error</u>
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<u>627</u>	<u>15</u>	<u>"doesn't mean" should be "isn't meant" / Clarification</u>
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<u>673</u>	<u>10</u>	<u>drop word "about" / Clarification</u>
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<u>690</u>	<u>22</u>	<u>add "s" to bellwether / Transcription error</u>
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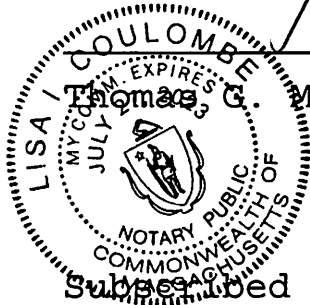
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ACKNOWLEDGMENT OF DEPONENT

I, Thomas G. McGuire, Ph.D., do
hereby certify that I have read the foregoing
pages and that the same is a correct
transcription of the answers given by me to
the questions therein propounded, except for
the corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.



Thomas G. McGuire, Ph.D.

May 28, 2019
DATE

Subscribed and sworn to before me this

28th day of May, 20 19.

My commission expires: July 27, 2023

Lisa I. Coulomb
Notary Public